

# FROM CIVILIAN INPUT TO CIVILIAN CONTROL: The Principles of Effective Police Oversight



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# INTRODUCTION

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In the days and weeks following the murder of George Floyd, people throughout the United States organized and protested against racist systems of policing, criminalization, and incarceration. Some called for defunding and abolishing entire police departments, while others demanded more incremental policing reforms. But across the board, a common theme emerged: the police, and as importantly police unions, have too much power, which they have used to protect their own interests at the expense of the communities they are sworn to serve. Afforded extraordinary deference by prosecutors, judges, and other officials, and insulated from meaningful accountability, the police seem too often to operate above the law, sometimes inflicting devastating harm. While cities are considering shrinking the role of the police, oversight is still needed no matter how big or small a police department becomes.

How does this happen? First, existing police accountability systems do not sufficiently address community grievances and police misconduct. Second, most systems are not independent and transparent, but rather concentrate power in the hands of the mayor and the chief of police. Third, accountability systems are often plagued by bias in favor of police interests and lack any real authority to adopt policies or impose discipline. To be effective, police oversight must be driven by the community, not law enforcement, and must include real transparency. It is not enough to have civilian input on police discipline and policy, there must be civilian control.

As grassroots actors and policymakers assess the failures of civilian police oversight and work toward innovative solutions, some core principles

have emerged. To be effective, at a minimum, community-control and oversight of police must be:

- ▶ **Of the people**, drawn from the very populations most affected by police violence;
- ▶ **Independent** of mayors, police chiefs, and law enforcement, though, appointed by the mayor and city council, with advice from community-led groups and an opportunity for public comment before appointment; and
- ▶ **Power**—they must have power to create rules rather than to merely advise on rules; power to institute disciplinary charges against officers rather than merely suggest discipline; power to hire an inspector general tasked with reviewing policies and procedures related to use of force, as well as making recommendations to change those policies; power to investigate and subpoena information, records, and witnesses; power to audit budgets and operations, as well as determine police budgets; and power to tell the public what they learn.

## THE PROBLEM: THE POLICE EVADE TRANSPARENCY & ACCOUNTABILITY

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Police officers are public servants, and yet they are seemingly unaccountable to the very public they serve. In most cities and towns, policing is not transparent: police departments do not keep data on very basic policing information.

How many people are hurt by police? How many are stopped? How many Black people are shot by police? Even when such information exists, police officers are rarely held accountable for excessive force, pretextual traffic stops, unlawful searches, or unwarranted surveillance. Additionally, police departments, unlike other government agencies, are not subject to public hearing requirements before making rule changes.

In the absence of real accountability or transparency, police departments have expanded their power and trampled on the public's legal rights in myriad ways. Consider:

Since at least 2005, the third largest police department in the country, the Chicago Police Department, purchased secret surveillance technology to track cellphones. Questions about how the data was used, where it was stored, what information was provided to judges, and how broad the surveillance swept yielded little to no responses from the police department. The information came to light only after years of litigation and requests for information.

- ▶ In 2019, in Washington, DC, police officers conducted 11,600 stops across the city over a four-week period. Of all stops recorded during that period, 70% were of African-Americans, despite the fact that African-Americans comprise less than half of the city's population. Perhaps most troubling, Black people represented 87% of those stops that resulted in no arrest and no traffic tickets being issued.
- ▶ In 2020, in the days following the murder of George Floyd, thousands of protesters gathered in New York City to demand change against systemic racism and police brutality. Eyewitness testimony, video evidence, and reports demonstrated police responding to peaceful protestors with "indiscriminate use of pepper spray, batons, and other force."

- ▶ And, most troubling, there are the police killings of Breonna Taylor and George Floyd and Tamir Rice and Eric Garner and so many others—over 1000 per year—where few sanctions, much less prosecutions follow.

## THE SOLUTION: CIVILIAN OVERSIGHT

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Civilian oversight is not a new idea. The first civilian review boards go back to 1948. Even before then, in 1931, the Wickersham Commission concluded that every locality must have some disinterested agency where citizens could report abuse. Today they exist in more than 100 cities and towns across the United States. The National Association for Civilian Oversight of Law Enforcement (NACOLE) lists more than 200 oversight entities, many of them in large urban cities. Each civilian review board operates in a different way: some boards have authority to independently investigate complaints while others have authority only to review investigations conducted internally by police. In many jurisdictions, members of civilian boards and commissions are appointed by the mayor, not by members of the community. Most, however, simply do not have capacity and resources, lack adequate investigative powers, and have insufficient independence from mayors and police chiefs. As a result, they have failed to provide effective oversight of police behavior.

But efforts focused on changing policing policies, procedures, or laws have largely proven ineffective. According to scholars who study civilian review boards, oversight is often undercut by common structural flaws: (1) many civilian review boards lack independence—they may not have the power to subpoena or lack financial resources to operate; (2) ineffective boards lack transparency—some boards cannot publicly announce their findings,

and thus community members do not have information about the process and outcome; (3) perceived bias by board members—for instance, some boards are comprised of former law enforcement officers or tend to defer to law enforcement as experts; and (4) weakening of oversight by police unions and union contracts.

Consider the following examples:

- ▶ Austin, Texas formed a Citizen Review Panel in 2001. In 2018, the City Auditor issued a report concluding that the Citizen Commission failed to make significant changes to policing. The CRP failed because police chiefs failed to implement the recommendations to improve policing. Indeed, the panel was unable to communicate directly with the chief of police, and the chief of police ignored the panel’s recommendations.
- ▶ Chicago, Illinois: From 2011-2015, the Independent Police Review Authority, since replaced by a different civilian review board, failed to fully investigate 40% of complaints against officers, and only sustained 7% of such complaints. A Police Accountability Task Force concluded that the investigative agency lacked true independence, lacked resources, and was not accountable for its work. That same task force concluded that the community had been shut out of Chicago’s police oversight system.
- ▶ In New York City, the modern civilian complaint review board (CCRB), formed in 1993 and strengthened via ballot initiative in 2019, has substantial power to hear, investigate, and recommend actions against members of the police department where certain misconduct is alleged. Moreover, its members are members of the public and are independent of the police department. Yet, the CCRB is hampered by a lack of

authority to discipline officers. It is the police commissioner who has ultimate authority to decide what discipline to impose. For instance, in the 5-year period ranging from 2014-2018, the CCRB recommended termination or suspension of 600 officers. At no point during that 5-year period did the NYPD Commissioner terminate an officer following such recommendations.

- ▶ In San Francisco, the Office of Citizen Complaints, formed in 1982, adopted civilian oversight. Yet, over the course of its history, there have been complaints related to lack of effectiveness and weak political will to enact recommended discipline. Moreover, they could only investigate officer involved shootings after a citizen complaint was filed, preventing them from investigating 27 of 35 officer involved shootings between 2011 and 2016.

## THE OAKLAND MODEL & PRINCIPLES FOR MORE EFFECTIVE COMMUNITY-BASED OVERSIGHT

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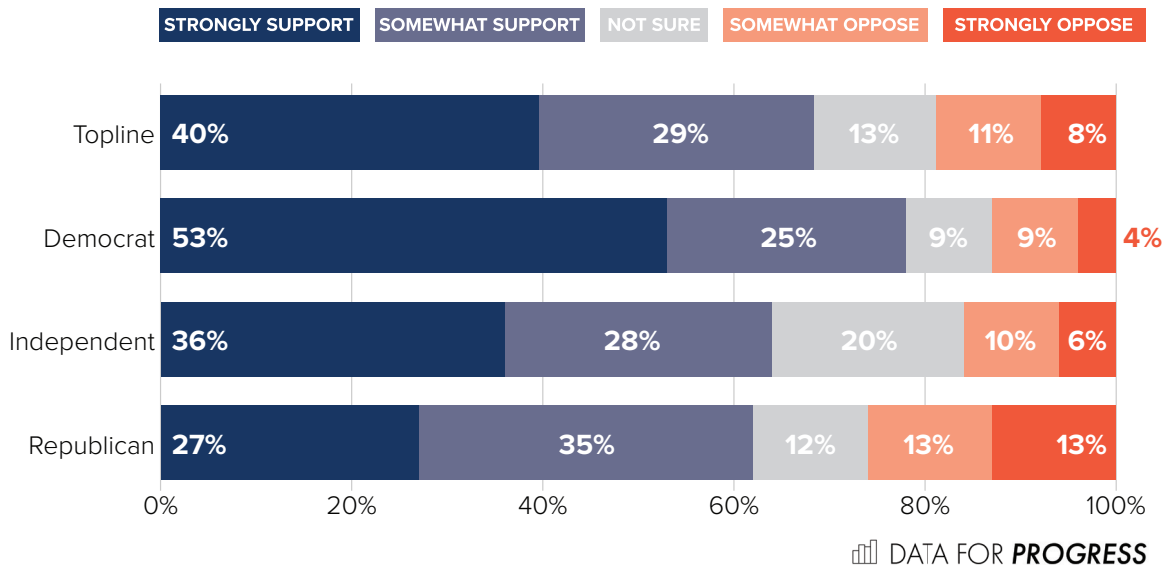
Despite the track record of civilian review boards, simply abandoning community based oversight is not the answer. First, it is clear that where civilians have a more prominent role in investigations and more power to set police policy, more civilian complaints are sustained. Second, criminal system reforms, including reforms to policing, require local input and local oversight. It is also important to consider that while past designs for civilian oversight and review have offered community input or influence, they have

not transferred meaningful, structural power to policed communities. But this is changing. From Atlanta to Los Angeles to Houston to Nashville, community stakeholders and advocates have recognized the potential of civilian control to create a more effective oversight model.

Nationally, the public supports these efforts. In a recent survey conducted by Data for Progress and The Justice Collaborative Institute, 69% of voters supported the creation of police oversight

commissions comprised of non-law enforcement civilians with the power to review police actions, issue subpoenas, and recommend discipline where police engaged in misconduct. Moreover, when voters were asked whether such commissions would help bolster confidence in police or whether such oversight would make policing worse, voters overwhelmingly concluded by 69% to 30% that citizen oversight would help bolster confidence in police.

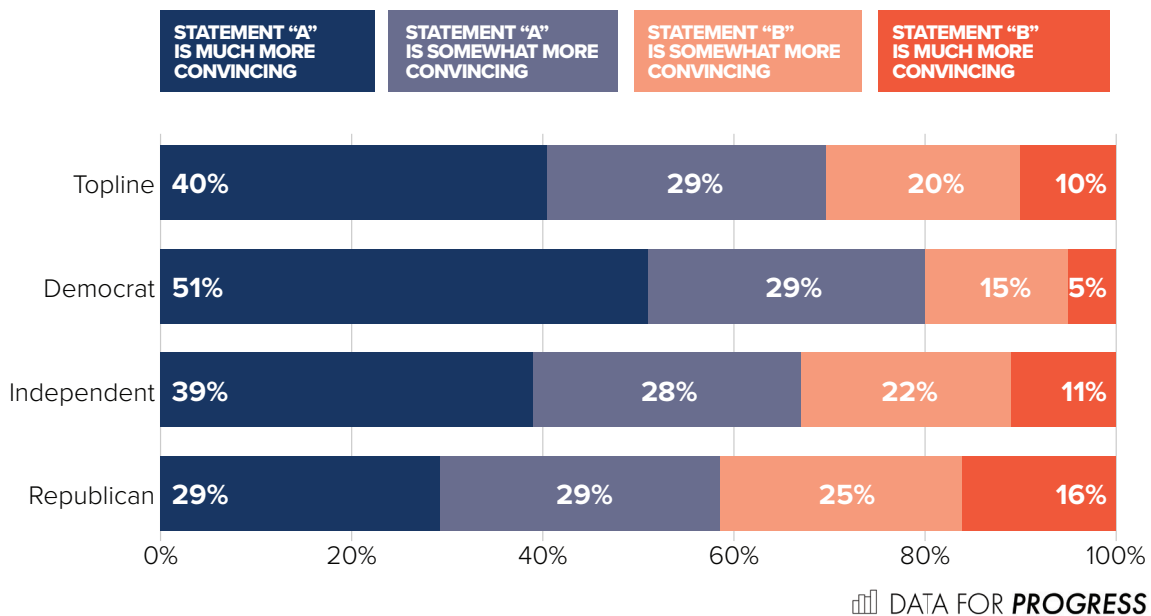
**Do you support or oppose creating police oversight commissions made up of non-law-enforcement officials that have the power to review police actions, issue subpoenas and recommend disciplinary actions?**



## Which statement to you find more convincing?

**A: Having police oversight commissions made up of members of the public will help bolster confidence in police departments, which can lead to increased cooperation and trust between departments and communities.**

**B: Police oversight commissions are just another bureaucracy that will make policing worse. Police departments may need reform, but they are experts at how to conduct their own oversight.**



In Oakland, a relatively new oversight structure grants significant powers to community-appointed members. The goal is not simply to revise police policies or push for constitutional policing, but rather to ensure “direct democratic community control” of law enforcement. The solution is not community policing, or even civilian review, but rather civilian control.

In Oakland, a 2016 community-initiated ballot measure established a [Police Commission](#) and a [Community Police Review Agency](#). This broad community oversight creates an independent Commission and Agency, demands

transparency by way of public hearings, and puts officer discipline in community hands. The Police Commission is comprised of nine community members, three recommended by the Mayor and four by a selection panel, with each recommending an alternate. Its mandate includes: (1) review the police department’s policies, procedures, and General Orders; (2) propose changes to those policies; and (3) approve or reject police initiated changes to rules and procedures related to use of force, profiling, and group gatherings.

The Commission is also authorized to remove the Chief of Police and has ultimate decision-making authority on officer discipline when there is disagreement between the Community Police Review Agency and the Chief of Police. Moreover, voters will have an opportunity to strengthen the existing Commission by approving a measure later this year that will allow the Commission to hire its own civilian inspector general. The inspector general would then be authorized to make recommendations on policies and procedures related to police misconduct and use of force.

Finally, the Community Police Review Agency—the second component of the Oakland model—is granted independent civilian investigation of complaints alleging police misconduct.

In Phoenix, after a record-breaking 44 police shootings in 2018, the community demanded community-led oversight. In February of this year, the City Council voted to create the Office of Accountability and Transparency and a Community Review Board. The Community Review Board will have authority to investigate civilian complaints against police, recommend policy changes to the police chief, and conduct community forums. Though the Phoenix model does not have ultimate decision-making authority over disciplinary actions, it does create a multi-faceted system with greater independence, transparency, and oversight.

**Core Principles:** The efforts in Oakland, Phoenix, and elsewhere demonstrate that communities have moved beyond trying to solve the problem of police violence by simply creating citizen review boards with little authority to implement policies or to enforce recommendations. Instead, more effective models provide communities actual authority to implement rule changes and file necessary discipline charges. For jurisdictions considering implementing similar community-based oversight, three core principles can be drawn from communities like Oakland:

**Of the people**, drawn from the very populations most affected by police power;

**Independent** of mayors, police chiefs, and other dominating figures; and

they must have **Power**, more than mere input, to create rules rather than to advise on rules; to file discipline charges on officers rather than suggest discipline; and to investigate, subpoena, and tell the public what they learn.