Some Question Whether Police Watchdog Has Enough Muscle

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NEW YORK — Even with new rules governing how it will prosecute officers in some misconduct cases, advocates and law experts question whether the city's police watchdog agency will have sufficient oversight authority over one of the country's largest police forces.

The rules set forth guidelines for how the Civilian Complaint Review Board will handle prosecutions according to the landmark memorandum of understanding between the agency and Police Commissioner Raymond Kelly that was signed in April.

They were adopted at the CCRB's public meeting yesterday, and will become law in 30 days

after being published in the City Record.

The agreement emerged after the police department faced increasing criticism over its tactics aimed at containing the Occupy Wall Street protests and its “stop-and-frisk” anti-crime measures, which critics say unfairly target blacks and Latinos.

"Stop-and-frisk" has brought a rash of complaints before the board over the past few years, though the number of such complaints actually dropped 10 percent between 2010 and 2011, according to the CCRB.

Nevertheless, the agreement between the NYPD and the CCRB has not been embraced as the final panacea to solve all the concerns about oversight of the more than 34,000-member police force.

Christopher Dunn, associate legal director at the New York Civil Liberties Union, said in an email yesterday that the rules adopted at yesterday's meeting were "just a cut-and-paste" of the memorandum of understanding.

In testimony at a public hearing on the rules held in Brooklyn on Nov. 28, Dunn reiterated his organization's position that the agreement does not go far enough in granting the CCRB, charged with investigating New Yorkers’ complaints about police misconduct, the powers it needs to hold police officers accountable for proven misconduct.

Like other critics, he said the NYCLU was particularly dissatisfied that the police commissioner would still be able to block some CCRB prosecutions. "This authority subverts the whole point of authorizing the CCRB to prosecute substantiated cases and should be removed," he said in his testimony.

Editor's Note: This version corrects the timeline on the development of the CCRB's prosecutorial powers, which were upheld by an Appellate Court in 2003, not struck down by a lower court as was previously reported. It also corrects that the CCRB has subpeona powers and that the NYCLU was concerned about the removal of a provision regarding the agency's

public reporting requirements. ***All updates are in bold.*** *(3:51 p.m., Dec. 13)*

Dunn also called for the removal of a provision in the rules that require the board to adhere to "[police] department disciplinary policies and standards."

He said the NYCLU believes this provision will limit the CCRB's ability to independently prosecute cases.

The NYCLU also despaired that the rule changes **took out a provision regarding the CCRB's public reporting policies.** There are no rules explicitly requiring the CCRB to regularly report the status of complaints to those who first brought them to the board. The NYCLU requested a provision that would mandate the agency to periodically report to the general public about the statuses of their prosecutions.

Citizens Union, the sister organization of Gotham Gazette, also called for more public reporting of the prosecutions in its recommendations on Nov. 28.

Alex Camarda, public policy director at Citizens Union, said he was disappointed the agency chose not to amend the rules according to the recommendations aired at the public hearing.

"What is the point of holding a hearing and going through the process?" he said in an email. "It certainly doesn't provide an incentive for the public to participate."

The agency regularly issues performance and status reports on its website that include statistics on complaints, case closures and disposition of allegations.

Linda Sachs, a spokeswoman for the CCRB, declined to respond specific criticisms of the agency. "We have a track record of accountability and extensive public reporting on the agency's actions," she said.

The CCRB investigates complaints involving excessive force, abuse of authority, discourtesy and use of offensive language.

The "seed" for the agency's new powers to prosecute police misconduct grew out of pilot programs that began in 2008.

Daniel Chu, the chair of the CCRB, said in the agency's annual report for 2011 that "benefits derived from these programs emerged quickly."

"Public confidence in the fairness and transparency of the NYPD's disciplinary process has been advanced," he wrote.

The Evolution of the CCRB

"My father tried to put in an independent police review board. It was shot down in court. The CCRB is a compromise," said Councilman Peter Vallone Jr., chair of the City Council's Committee on Public Safety. "It's working."

The conservative Democrat, known for his tough stance on crime and ardent defense of the NYPD, said the ability of the CCRB to use their own prosecutors was "a great start." Vallone's father, Peter Vallone Sr., was the long-time speaker of the City Council. The current incarnation of the CCRB was established during Vallone Sr.'s tenure as speaker in 1993, when David Dinkins was mayor.

Versions of a police review board have existed since the 1950s. Violent clashes between civilians and police officers at Manhattan's Tompkins Square Park in 1988 triggered public outcry over the heavy-handed tactics of the NYPD. The police commissioner at the time, Benjamin Ward, admitted that police had in essence incited a riot by charging protesters and even clubbing bystanders.

The riots of Tompkins Square Park provided the impetus for the creation of today's

mayoral-appointed CCRB, composed of 13 members who are, as the name of the board implies, civilians and not police officers. The City Council nominates five members and one must be selected from each borough. Three are nominated by the police commissioner and can be former law enforcement officials; five are nominated by the mayor.

The March agreement to amend the CCRB is actually a proposal left over from the Giuliani administration. Former Police Commissioner Bernard Kerik and the CCRB agreed to give the board the ability to prosecute officers in April of 2001. **But it took several years of legal wrangling before a 2003 decision by a state Appellate Court upheld the agreement granting the CCRB "the revocable authority to administratively prosecute police officers for certain enumerated offenses."**

It wasn't until the beginning of the 2008 pilot project that a CCRB attorney was allowed observer status at administrative trials; in 2011, the CCRB attorney took the lead and began conducting trials for some Board cases.

Whether today's CCRB is "working," as Vallone asserts, is a hotly debated issue. Even less clear is whether having prosecutors from the CCRB work on cases where the CCRB has substantiated wrongdoing is enough to lend credibility to a board that, as one law professor and criminal defense attorney put it, could sometimes "have no life."

For its part, the police officers' union, the Patrolmen's Benevolent Association, has criticized the memorandum of agreement and called into question — as they often do — the CCRB's impartiality.

The PBA issued the following statement from President Patrick Lynch:

Our problem with CCRB has always been first, their predisposition that police officers are always wrong, second, their inexperienced investigators who conduct faulty investigations that arrive at improper conclusions, and now those wrong conclusions will be prosecuted at these kangaroo trials.

Questioning the Change

From 2007 through 2011, the board substantiated an average of 200 cases annually that it referred to the police. It received almost 6,000 complaints in 2011. Its current budget, a relatively modest $12,048,652, is billions of dollars less than the department it is tasked with policing.

Police officers can be put on trial by departmental lawyers before an administrative judge who also was a police department employee. This will still be the case even after changes to the CCRB become law. Police Commissioner Ray Kelly will also still be able to unilaterally block all prosecutions.

Jennifer Blasser, a clinical assistant professor of law and criminal defense attorney at Benjamin N. Cardozo School of Law, said the agreement was "significant" because the CCRB previously lacked sufficient powers.

“The board would go through the whole process of fact-finding and interviewing and then it felt like it sort of died there,” she said. “If the Police Department didn’t want to pursue it, they didn’t. The accountability which the Civilian Complaint Review Board was supposed to impose on the police department in some ways was lacking because it didn’t have the power.”

One concern from a perspective of accountability, Blasser said, is that the administrative judge will still be from the NYPD.

But a seismic change in the outcomes of cases does not appear likely.

“It’s hard at this moment to say this one element [CCRB having its own prosecutors work on cases] is going to create substantive change in a culture of a police practice,” Blasser added.

Robert Gangi, director of the Police Reform Organization Project of the Urban Justice Center, was far more pessimistic than Blasser about the degree to which the rule changes would embolden the oversight agency.

“We’re very cynical about the value and effectiveness of the CCRB,” Gangi said. “An agency can’t be an effective monitor of the NYPD unless it’s outside the executive branch of government.”

The CCRB is an independent agency and has the power to issue subpeonas.

Some groups and elected officials have also called for the creation of an office of inspector general to oversee the NYPD and make policy recommendations.

Martha Rayner, a clinical associate professor of law at Fordham University School of Law, would like the CCRB to be armed with the type of data that the NYPD possesses with CompStat, the comprehensive crime reduction system that compiles a bevy of localized crime data. A CompStat-like system that instead helps the public understand policing practices could be beneficial, Rayner said.

Rayner does not foresee the current rule changes significantly altering the CCRB.

“This could end up just being an organizational restructuring, change without meaning,” she said. “The same systematic pressures that led to problems when the NYPD prosecutes a case may cause the same thing to happen when CCRB prosecutors pursue cases.”

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