



THE CITY OF SAN DIEGO

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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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**Date Issued:** September 10, 2018

**IBA Report Number:** 18-28

**Public Safety & Livable Neighborhoods Committee Meeting Date:** September 19, 2018

**Item Number:** TBD

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# Proposed Response to Grand Jury Report “San Diego Community Review Board on Police Practices”

## OVERVIEW

On May 21, 2018, the San Diego County Grand Jury filed a report, directed to the San Diego Mayor and City Council, entitled “San Diego Community Review Board on Police Practices” (CRB).

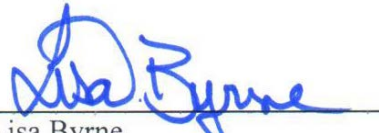
Per the Grand Jury report, the Mayor and Council are required to provide comments to the Presiding Judge of the San Diego Superior Court on the applicable findings and recommendations within 90 days. However, due to the summer legislative recess, the Mayor’s and Council President’s offices requested and received an extension for their responses to November 16, 2018.

In responding to each Grand Jury finding, the City is required to either (1) agree with the finding or (2) disagree wholly or partially with the finding. Responses to Grand Jury recommendations must indicate that each recommendation (1) has been implemented; (2) has not yet been implemented, but will be in the future; (3) requires further analysis; or (4) will not be implemented because it is not warranted or is not reasonable. Explanations for responses are requested when applicable.

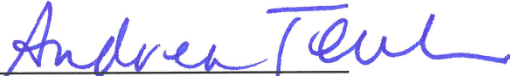
The Office of the IBA worked collaboratively with the Mayor’s Office to develop a proposed joint Council/Mayoral response to the Grand Jury report, which is included as Attachment 1 to this report. We request that the Public Safety & Livable Neighborhoods Committee provide feedback and forward its approved proposed response to the full Council.



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Attachments:

1. Proposed City Response to San Diego County Grand Jury Report Entitled “San Diego Community Review Board on Police Practices”
2. San Diego County Grand Jury Report Entitled “San Diego Community Review Board on Police Practices”

**Proposed City Response to  
San Diego County Grand Jury Report Entitled  
“San Diego Community Review Board on Police Practices”**

Pursuant to California Penal Code Section 933(c), the City of San Diego provides the following responses to the findings and recommendations included in the above referenced Grand Jury Report:

**FINDINGS 01 THROUGH 08**

**Finding 01:** *The CRB requires frequent replacement of members who leave in order to maintain a membership level necessary to accomplish its assigned tasks.*

**Response: The Mayor and City Council agree with the Grand Jury’s finding.**

**Finding 02:** *The operation of the CRB has been negatively impacted by the failure of the San Diego City Government to implement Measure G.*

**Response: The Mayor and City Council partially disagree with the Grand Jury’s finding.**

Measure G went into effect on August 10, 2018 and the City immediately implemented the portions of the measure that did not require City Council action. This included the change in name, the review of officer involved shooting cases and in-custody death cases.

A significant change made by Measure G was shifting the exclusive authority to create and establish a community review board on police practices from the City Manager (Mayor) to the Mayor and City Council. Establishing the rules and regulations for a board that reviews confidential SDPD Internal Affairs (IA) cases and makes policy recommendations to the Mayor and City Council required extensive research and public participation. A total of eight public hearings were held including at CRB Rules Committee, CRB Board, City Council Rules Committee and City Council. The result was an implementing ordinance and a first of its kind City Council approved Standard Operating Procedures governing the way the Board conducts its business. During this process, which led to unanimous approval by the City Council, only one Closed Session meeting of the Board was cancelled due to lack of quorum. There was no appreciable change in the time it took to review cases and the Board issued two policy recommendation letters to the Mayor and/or Chief of Police. The process to fully implement Measure G lead to a positive result with minimal negative impact to the work of the Board. For this reason, the Mayor and City Council partially disagree with Finding 02.

**Finding 03:** *The Mayor’s Office and the City Council can resume filling CRB member and prospective member vacancies immediately.*

**Response: The Mayor and City Council partially disagree with the Grand Jury’s finding.**

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On May 10, 2018, the Mayor issued a memo soliciting input from the City Council on appointees to the CRB. The Measure G implementing ordinance and CRB Standard Operating Procedures went into effect in August 2018 which allowed the Mayor to appoint, and the Council to confirm, appointees to the Board. In August 2018 the City Council approved 21 board members. The implementing ordinance eliminated the category of “prospective member” to streamline the appointment process and has replaced the practice with a CRB Academy. The City partially disagrees because the implementing ordinance eliminated prospective members so no prospective member vacancies remain.

**Finding 04:** *The CRB is hindered in carrying out its mission because it does not receive, categorize, and track all complaints that are submitted to the Police Department and to the CRB.*

**Response: The Mayor and City Council partially disagree with the Grand Jury’s finding.**

The public has multiple avenues to file a complaint against a SDPD officer. This includes by telephone, in person at any police facility, via email, or in writing to the Chief of Police, IA or the Community Review Board on Police Practices. Prior to the implementation of Measure G, the CRB only reviewed Category One complaints, which involve allegations of arrest, criminal conduct, discrimination, force, detention, search and seizure, and/or slur. Category Two complaints, which involve allegations of procedure, courtesy, conduct, and/or service, were reviewed by CRB when associated with a Category One complaint. Following the implementation of Measure G, the CRB added an audit procedure for all Category Two complaints.

The City has been working to improve the tracking system between SDPD and the CRB. The CRB has been able to accomplish its mission to review complaints against members of the SDPD and the SDPD’s administration of discipline. However, the implementation of an improved joint-tracking system will enhance the CRB’s ability to assess work flow and provide important continued civilian oversight of the process. For this reason, the City partially disagrees with Finding 04.

**Finding 05:** *The CRB does not adequately fulfill its responsibility to advise the Mayor and the City Council under the current reporting practices.*

**Response: The Mayor and City Council disagree with the Grand Jury’s finding.**

The CRB regularly advises the Mayor and City Council through individual City Councilmember briefings, policy recommendation letters, semi-annual reports, and through the Executive Director and newly formed Office of Boards and Commissions. The CRB is also one of the few boards that keeps track of community outreach time with volunteers logging over 3000 hours in FY 2018. The volunteers on this board should be commended for their service and the thoughtful approach to representing the community

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in the disposition of their oversight duties.

The CRB’s provision of community oversight of law enforcement is always a work in progress and the CRB strives to develop and follow best practices. When appropriate, the CRB makes policy and procedural recommendations to the SDPD resulting from case review. In fiscal year 2018, several process improvements have been implemented and/or will be implemented that are inclusive of some of the initiatives identified by the CRB. They are as follows:

- Place SDPD Policy and Procedures online to create more transparency for the community (completed earlier this year)
- Continue to work with IA on flexibility with regard to case review and the development of a more defined complaint intake process
- Continue recruitment & retention efforts in Council Districts
- Explore providing additional case information, other than statistics, to the public
- Continue to retain and utilize outside legal counsel
- Formalize Category II Complaint Audit Process
- Finalize policy and procedures regarding case review
- Update bylaws to be consistent with Measure G
- Develop and implement the New Citizen Training Academy for newly appointed members and existing members
- Review unlawful detention and search & seizure cases

For these reasons we disagree with Finding 05.

**Finding 06:** *SDPD presence in closed meetings may inhibit free and open discussion by CRB members.*

**Response: The Mayor and City Council disagree with the Grand Jury’s finding.**

The presence of SDPD in closed session meetings of the CRB is intended to provide a resource to the Board as they deliberate on cases. The review model that the CRB uses affords the Board all information regarding an IA case and ensures civilian oversight through the entire IA process. This constant interaction between the CRB and IA allows for the Board to advise, question, consult, criticize, or commend IA during an investigation, with the aim of producing a better investigatory process from beginning to end. Additionally, the Board has a procedure in their bylaws that allows for an “Executive Session” that the Board can call during a Closed Session meeting which does not include members of the SDPD. For these reasons the City disagrees that the presence of the SDPD may inhibit free and open discussion by CRB members.

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**Finding 07:** *The CRB should have the authority to control attendance at closed sessions.*

**Response: The Mayor and City Council agree with the Grand Jury’s finding.**

The CRB has the authority to control attendance at its closed session meetings. Per the CRB bylaws, the CRB has the authority to convene an Executive Session which is solely attended by the members of the CRB.

**Finding 08:** *Many members of the community do not consider the CRB to be independent from the SDPD.*

**Response: The Mayor and City Council disagree with the Grand Jury’s finding.**

Although there have been members of the community who have expressed that they do not consider the CRB to be independent from the SDPD, the Grand Jury report does not provide sufficient evidence as to the pervasiveness of this viewpoint.

The function of the CRB is to provide civilian oversight over IA investigations. This civilian oversight occurs at every step of the process, from intake of complaints to investigation oversight, to findings and communication of those findings. The SDPD does not have the authority or power to intervene in the activities of the CRB as the CRB is a Charter-mandated board created by the authority of the voters. The rules and regulations necessary to the operation of the Board are enacted by the Mayor and City Council. There is therefore no authority that the SDPD wields over the CRB. It is, by its nature as a Charter created Board, independent from the SDPD and responsible only to the Mayor and City Council who appoint its members and govern its work.

The CRB-IA relationship is indeed collaborative, but it is also one of real accountability. The CRB exists to ensure that the IA investigation is thorough and fair. During a team’s review of a case, the team may notice that a case needs further investigation, and/or the team may suggest a change to IA regarding a case. Changes that can be made to a case may include:

- Allegations – allegations added, deleted, or wording changed
- Findings – findings changed from one finding to another
- Interviews – additional questions are asked of previously interviewed officers, complainants, witnesses, and experts or new interviews are conducted
- Evidence – additional evidence requested and sought in a case

Transparency, collaboration, and accountability are critical in citizen oversight of law enforcement. The CRB strives to be transparent while complying with federal, state, and local law. Due to its collaborative working relationship with SDPD, the CRB has been able to reach milestones that have improved the relationship between the community and law

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enforcement, such as the agreement to transparently post policies and procedures online. The City of San Diego has an effective oversight entity which continues to be a model for citizens’ review of law enforcement. The CRB will continue to improve the process to ensure transparency, accountability and fairness.

**RECOMMENDATIONS 18-13 THROUGH 18-15**

**RECOMMENDATION 18-13:** *Take steps to bring forward the rules and regulations necessary to implement Measure G for approval within three months. The rules and regulations should provide solutions to the following deficiencies:*

- a. The need for the CRB to have the ability and authority to track all complaints.*
- b. The inability of the CRB and the SDPD IA to jointly categorize all complaints.*
- c. The inability of the CRB to review all SDPD IA investigations of complaints whether the complaints were submitted to the SDPD or to the CRB.*
- d. The need to clarify if the CRB has the authority to determine who may attend closed sessions other than the members of the board.*
- e. The lack of required CRB periodic reports on all cases, or at least a summary of all cases, for review to the Mayor and City Council.*

**Response: The recommendation has been implemented.**

The ordinance to implement Measure G went into effect on August 10, 2018.

In April 2018, the CRB presented its semi-annual report on case statistics and update on the CRB to the City Council’s Public Safety and Livable Neighborhoods Committee and Mayor’s Office. The next semi-annual update is tentatively scheduled for November 28, 2018. The Annual Report for Fiscal Year 2018 will be released in October of 2018 and will be posted on the CRB website.

CRB bylaws give the CRB authority to determine who may attend the executive session component of closed sessions. Also, the City is working to improve the complaint tracking system between the SDPD and the CRB. However, CRB and SDPD will not jointly categorize all complaints.

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**RECOMMENDATION 18-14:** *Consider proposing an amendment to the City Charter to give the CRB subpoena power, the authority to perform independent investigations of citizen complaints, independent investigators, and the authority to report directly to the Mayor and City Council.*

**Response: The recommendation has been implemented.**

A similar proposed ballot measure related to the CRB was considered by the City Council’s Rules Committee during its 2018 ballot measure review process. This measure was forwarded to the full City Council, but due to its potential impact on represented employees, under California law, completion of a meet and confer process was required prior to consideration by the City Council for placement on the ballot. In August of 2018, the City Council considered whether to authorize the initiation of a meet and confer process with the Police Officers’ Association and the Municipal Employees Association, the potentially affected recognized labor organizations, regarding this proposed ballot measure. The City Council did not authorize the initiation of this required meet and confer process. As a result, the proposed ballot measure could not be considered by the Council for placement on the November 2018 ballot.

**RECOMMENDATION 18-15:** *Take action to begin filling CRB Appointed Member and Prospective Member vacancies immediately.*

**Response: The recommendation has been implemented.**

The Grand Jury’s recommendation that the City take action to begin filling CRB appointed member vacancies was implemented as of August 7, 2018. With the implementation of Measure G, there is no longer a prospective member category. This category was removed to align the CRB with the appointment process for the City’s Boards and Commissions.



## **SAN DIEGO COMMUNITY REVIEW BOARD ON POLICE PRACTICES (CRB)**

### ***SUMMARY***

The 2017/2018 San Diego County Grand Jury (Grand Jury) investigated the organization and operations of the City of San Diego Community Review Board on Police Practices (CRB). The investigation was based on a citizen's complaint that the CRB was understaffed and unable to carry out its obligations because the City has not enacted implementing legislation and regulations after Measure G, an amendment to City Charter Section 43(d) was approved by the voters with the effective date of December 19, 2016.

The Grand Jury recommends that the San Diego Mayor and City Council consider:

- Taking steps to bring forward the rules and regulations necessary to implement Measure G for approval within three months. The rules and regulations should provide solutions to the following deficiencies:
  - a. The need for the CRB to have the ability and authority to track all complaints.
  - b. The inability of the CRB and the SDPD IA to jointly categorize all complaints.
  - c. The inability of the CRB to review all SDPD IA investigations of complaints whether the complaints were submitted to the SDPD or to the CRB.
  - d. The need to clarify if the CRB has the authority to determine who may attend closed sessions other than the members of the board.
  - e. The lack of required CRB periodic reports on all cases, or at least a summary of all cases, for review to the Mayor and City Council.
- Consider proposing an amendment to the City Charter to give the CRB Subpoena power, the authority to perform independent investigations of citizen complaints, independent investigators, and the authority to report directly to the Mayor and City Council.
- Taking action to begin filling CRB Appointed Member and Prospective Member vacancies immediately.

### ***INTRODUCTION***

The San Diego City Charter Section 43(d), as amended on December 19, 2016 states...  
the Mayor and City Council shall have the exclusive authority to create and establish a community review board on police practices to review and evaluate citizens' complaints against members of the San Diego Police Department and the San Diego Police Department's administration of discipline arising from such complaints.

It further states that:

the Mayor and City Council shall establish rules and regulations for this board to carry out its functions.

As defined by its bylaws and operating procedures the CRB reviews and evaluates SDPD IA investigations of citizens' complaints, officer-involved shootings, all in-custody deaths, all police

actions that result in the death of a person, and the administration of discipline arising from such complaints.

The Grand Jury examined the history of the CRB, its current operation, and the status of the implementing legislation and rules that the Mayor's office decided were necessary to carry out the new provisions of City Charter Section 43(d). The Grand Jury also examined issues that arose during this investigation, specifically the public perception of the CRB's independence.

### ***PROCEDURE***

The Grand Jury examined:

- the CRB as created on April 3, 1989 as the Citizens Review Board on Police Procedures.
- the CRB as constituted following the passage of Measure G on December 19, 2016.
- the status of implementing legislation after the City Charter Section 43(d) was amended by the adoption of Measure G on December 19, 2016.
- issues that arose during this investigation concerning the independence of the CRB from the SDPD and the perception of the CRB by the public.

The Grand Jury reviewed:

- the City Charter
- CRB reports
- the CRB Bylaws
- the Memorandum of Understanding (MOU) between City of San Diego and San Diego Police Officers Association dated July 1, 2015.
- the 2015/2016 Grand Jury Report "Citizen Oversight Boards of Police Behavior"
- the 2011/2012 Grand Jury Report "Citizen's Review Board on Police Practices"
- the SDPD Discipline Matrix
- San Diego City Council Policy 000-13, Procedure for Mayor and Council Appointments
- videos of several past City Council Meetings where the CRB and Measure G were discussed.

The Grand Jury interviewed:

- Past and present members of the CRB.
- Members of the Mayor's office.
- Members of the San Diego City Council.
- Interested citizens.
- Members of the San Diego City Attorney's office.

### ***DISCUSSION***

#### ***APPOINTMENT OF MEMBERS TO THE CRB***

The San Diego City Charter, Section 43(a) provides that the City Council may by ordinance create and establish advisory boards. Advisory boards are created "...to consult and advise with the Mayor, City Council or City Manager, as the case may be, but not direct the conduct of any Department or Division."

On April 3, 1989 the Citizens' Review Board on Police Practices (CRB), an advisory board as defined by San Diego City Charter Section 43(a), was established by the enactment of Charter Section 43(d). On December 19, 2016 Section 43(d) was amended following the passage of Measure G, which changed the name of the CRB to the Community Review Board on Police Practices, gave the Mayor and City Council the exclusive authority to create the board and to establish the rules and regulations for its operations, and added a provision relative to officer-involved shootings and in-custody deaths.

Prior to the passage of Measure G no ordinance or other implementing legislation was deemed necessary in order to appoint members to the Board. None was enacted, and during that time members were appointed under the provisions of Charter Section 43(a) and Council Policy 000-13.

The CRB operates under the authority of bylaws and Standard Operating Procedures adopted by the CRB and approved by the Mayor. The bylaws establish that the CRB has 23 Appointed Members and 23 Prospective Members. Prospective Members are in training to become Appointed Members and they can be called upon to serve when an Appointed Member is on leave, when case review backlog requires, or in the event of a mid-year resignation of an Appointed Member. City officials who oversee the operations of the CRB decided that following the amendment of Section 43(d), an ordinance or other implementing legislation is required to establish the authority for appointments to the CRB. Consequently, no appointments to the CRB have been made since December 2016 and it does not appear that any will be allowed until such legislation is enacted.

To date no implementing legislation has been proposed or enacted. The CRB has repeatedly asked the Mayor's office about the status of this action, but has not received a definitive response, or even a firm timeline. The issue was raised again in the CRB's FY2017 Annual Report to the City. In October 2017 the CRB raised this issue with the City Council Public Safety and Livable Neighborhoods Committee.

At present the CRB has only 15 Appointed and two Prospective Members, rather than the 23 of each established in the bylaws. This reduced membership has negatively impacted its operation. Limited membership reduces the number of members available to conduct reviews of police investigations of citizens' complaints and makes it more difficult for the CRB to muster the ten members needed to vote for approval or disapproval of a case review as required by the bylaws.

Appointments to the CRB have always been made under the authority defined in Section 43(a) and Council Policy 000-13. Those authorities were not changed by the 2016 amendments to Section 43(d). The Grand Jury has determined that the decision to suspend appointments was not based on any formal legal opinion, and it is uncertain whether that question was posed to the City Attorney. Instead, the City is operating on an assumption that the respective roles of the Mayor and the Council need to be defined before appointments can be made. This assumption has not applied to other CRB functions, as the operation of the CRB has continued based on the bylaws and Operating Procedures under which it operated prior to December 19, 2016.

The delay in appointing new members to the CRB was a San Diego Mayor's office management decision. Thus, the problem could be solved immediately whenever management chooses to solve it.

### *CURRENT CRB OPERATIONS*

The CRB bylaws establish the composition, the organizational structure, and provisions for management of the CRB. The Standard Operating Procedures include two components: (1) the Case Review Procedure, the document that defines the processes by which the CRB reviews the SDPD IA investigations; and (2) the Administrative Standing Rule and the Presentation of CRB Case Review Reports, the document that describes the content and format of the CRB report.

The primary function of the CRB is to review and evaluate the SDPD IA's investigation of citizens' complaints against the SDPD. A small number of these complaints are submitted directly to the CRB, but most are submitted to SDPD, which divides them into two categories:

- Category I includes complaints concerning arrest, criminal conduct, discrimination, use of force, and/or slur.
- Category II includes complaints concerning procedures, courtesy, conduct, and/or service.

All Category I complaints are investigated by SDPD IA and reviewed by the CRB. Category II complaints are considered less serious, and are not seen by the CRB unless they are part of a Category I complaint. Instead, the Division Commander where the incident took place is responsible for review, investigation, and action.

The CRB does not participate in the categorization of complaints submitted to the SDPD. Consequently, the CRB cannot be certain that it sees all complaints that may be relevant to its advisory responsibilities, and cannot determine whether any have been misclassified. In addition, the SDPD IA uses a tracking system to control the processing of all complaints. The CRB does not have access to this tracking system. To ensure the CRB maintains control of their review process, it needs access to the SDPD IA tracking system.

The CRB reviews investigations completed by SDPD IA rather than conduct its own investigations. CRB teams of three board members review each SDPD IA investigation. The reviews take place in the SDPD IA facilities and are subject to facility access constraints that may be imposed by SDPD IA. The CRB teams do, however, have access to all materials used or created by SDPD IA for Category I complaints such as reports, interviews, video recordings, and the analyses of the SDPD IA officer(s) who conducted the investigation. When the CRB team review is complete, the team presents its findings to the full CRB in closed session. Such sessions are closed because of the confidential nature of the information to be discussed. During these sessions the CRB votes either to agree with SDPD IA findings, to agree with SDPD IA findings with comment, or to disagree with the SDPD IA finding with comment.

Members of the SDPD routinely attend CRB closed sessions to answer questions about the investigations. The most recent available draft of the Standard Operating Procedures, dated March 14, 2017 (which appear to be the procedures under which the CRB currently operates) states...

CRB Closed Meetings should be attended by only the responsible lieutenant and/or the IA Investigator for any case scheduled to be presented to the Board. The IA Captain and IA Liaison Officer (Custodian of Record), and the Executive Assistant Chief also may attend.

The current bylaws provide that,

Attendance [at closed meetings] is limited to Board Members, the Executive Director and assigned City Staff, designated SDPD Internal Affairs staff, designated City Attorney Office representatives ...

There is no agreement among members of the CRB, the Mayor's staff, the SDPD, and the City Attorney's Office as to whether the CRB can exclude the SDPD from closed sessions. SDPD testimony would be useful in explaining the investigations conducted by the SDPD IA and the reasons surrounding the IA findings. However, SDPD personnel are also present during the CRB's closed sessions. Even though the SDPD normally accommodates a request by the CRB for exclusion, it does so without fully acknowledging that the CRB has the right to exclude SDPD personnel from its closed sessions. The presence of SDPD officers during closed CRB deliberations compromises the CRB's independence and has intimidated some of its members. The Grand Jury finds that the CRB should have the authority to include or exclude persons other than the members of the CRB during closed sessions. Otherwise, the CRB's appearance of being an unbiased and fair citizen review board will continue to be questioned.

#### *STATUS OF THE CRB AS AN ADVISORY BOARD*

City Charter Section 43(a) defines the CRB as an advisory board. Section 43(d) imposes on the CRB the duty to consult and advise the Mayor and Council. The semi-annual report that the CRB makes to the Mayor and City Council provides only general information about, and a statistical analysis of, the activities of the board. The report does not deal with the specifics of police actions and policies that arose during the incidents that were the basis of the citizen complaints. In practice the CRB seldom offers the Mayor and City Council specific advice. Thus, it is not clear that the CRB's current practice actually complies with the Section 43(d) requirement to consult and advise the Mayor and Council.

The CRB's review of the SDPD IA investigation of complaints is discussed with representatives of the Police Department. Differences between the CRB and the Police Department regarding the conclusions reached by the CRB relative to the investigation and policy recommendations are generally resolved by compromise. It is only in matters where the CRB and the SDPD cannot reach a compromise that matters go to the Mayor for resolution. As a result, the day-to-day review of IA investigations, the proposals of the CRB for changes to SDPD procedures, and the advisory opinions of the CRB reach the Mayor only on those occasions where the CRB and the SDPD cannot reach agreement.

To more fully comply with the reporting requirements of Charter Sections 43(a) and 43(d) the CRB reporting procedures should require reports on all cases reviewed, or a summary of all cases reviewed, be submitted to the Mayor and City Council.

### *CRB INDEPENDENCE*

There were two competing measures for the creation of a police review board on the November 8, 1988 ballot. Proposition F proposed Charter Section 57, a “Police Review Commission” that would have independent investigative authority including the power to subpoena and obtain sworn testimony during investigations of alleged police misconduct. Proposition G, “Citizens Review Board on Police Practices,” proposed that the Board would have only authority to review and evaluate SDPD IA’s investigations of citizens’ complaints against members of the SDPD.

Both propositions were approved by a majority of the voters. However, Proposition F received 181,195 votes and Proposition G received 182,075 votes. The law provides that when there are competing propositions, the one with the greater number of votes prevails. Consequently, Charter Section 43(d) and the Citizens’ Review Board on Police Practices came into effect on April 3, 1986.

Even though the weaker form of the measure won, it was a very narrow victory and there continues to be strong support for an independent investigative board. This position was most recently expressed during hearings leading to the placement of the December 19, 2016 amendment of Section 43(d) on the ballot, when many members of the public made strong arguments in favor of a fully independent Police Review Board. Many who have spoken on the matter do not consider the CRB as currently constituted to be independent from SDPD and do not believe the CRB reports reach fair and unbiased conclusions.

### *FACTS AND FINDINGS*

***Fact:* The Mayor and City Council have the authority to create and establish a Community Review Board on Police Practices and to appoint members to that board.**

***Fact:* For more than a year the San Diego City Government has neither introduced nor passed legislation to implement Measure G.**

***Fact:* The Grand Jury was unable to find any legal reason that implementing legislation is required before new CRB members can be appointed.**

**Finding 01:** The CRB requires frequent replacement of members who leave in order to maintain a membership level necessary to accomplish its assigned tasks.

**Finding 02:** The operation of the CRB has been negatively impacted by the failure of the San Diego City Government to implement Measure G.

**Finding 03:** The Mayor’s office and the City Council can resume filling CRB member and prospective member vacancies immediately.

***Fact:* The CRB does not participate in the categorization of complaints**

***Fact:* The CRB does not have access to all complaints, does not track all complaints, and does not review the SDPD IA investigation of all complaints.**

**Finding 04:** The CRB is hindered in carrying out its mission because it does not receive, categorize, and track all complaints that are submitted to the Police Department and to the CRB.

*Fact:* The CRB has a duty to consult and advise the Mayor and City Council.

*Fact:* The CRB provides semiannual overview reports to the Mayor and the City Council.

*Fact:* Other than the semi-annual report, the CRB advises the Mayor and City Council only when it disagrees with SDPD IA.

**Finding 05:** The CRB does not adequately fulfill its responsibility to advise the Mayor and the City Council under the current reporting practices.

*Fact:* Members of the SDPD routinely attend closed CRB meetings.

*Fact:* There is no stated rule asserting that the CRB has the authority to exclude SDPD officers from closed meetings.

**Finding 06:** SDPD presence in closed meetings may inhibit free and open discussion by CRB members.

**Finding 07:** The CRB should have the authority to control attendance at closed sessions.

*Fact:* The CRB does not have independent investigators or subpoena power and is authorized only to review some citizen complaints.

**Finding 08:** Many members of the community do not consider the CRB to be independent from the SDPD.

### ***RECOMMENDATIONS***

The San Diego County Grand Jury recommends that the San Diego Mayor and City Council:

- 18-13:** Take steps to bring forward the rules and regulations necessary to implement Measure G for approval within three months. The rules and regulations should provide solutions to the following deficiencies:
- a. The need for the CRB to have the ability and authority to track all complaints.
  - b. The inability of the CRB and the SDPD IA to jointly categorize all complaints.
  - c. The inability of the CRB to review all SDPD IA investigations of complaints whether the complaints were submitted to the SDPD or to the CRB.

- d. **The need to clarify if the CRB has the authority to determine who may attend closed sessions other than the members of the board.**
- e. **The lack of required CRB periodic reports on all cases, or at least a summary of all cases, for review to the Mayor and City Council.**

**18-14: Consider proposing an amendment to the City Charter to give the CRB Subpoena power, the authority to perform independent investigations of citizen complaints, independent investigators, and the authority to report directly to the Mayor and City Council.**

**18-15: Take action to begin filling CRB Appointed Member and Prospective Member vacancies immediately.**

### ***REQUIREMENTS AND INSTRUCTIONS***

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  - (1) The recommendation has been implemented, with a summary regarding the implemented action.
  - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
  - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.



(c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<b>Responding Agency</b>	<b>Recommendations</b>	<b>Date</b>
<b>Mayor, City of San Diego</b>	<b>18-13 through 18-15</b>	<b>8/20/18</b>
<b>San Diego City Council</b>	<b>18-13 through 18-15</b>	<b>8/20/18</b>