

# NACOLE Case Studies on Civilian Oversight

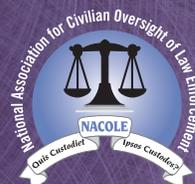
## Office of the Independent Monitor

Denver, Colorado  
Auditor-Monitor-Focused Model

by Michael Vitoroulis



**COPS**  
Community Oriented Policing Services  
U.S. Department of Justice





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# Program Context

Created by municipal ordinance in 2004 and codified into Denver’s charter in 2016, the Office of the Independent Monitor (OIM) and seven-member Citizen Oversight Board (COB) are the City and County of Denver’s civilian oversight agencies. The OIM and COB provide oversight of the Denver Police Department (DPD), a force of 1,459 sworn officers, and the Denver Sheriff Department (DSD), which consists of 985 sworn deputies responsible for the custody of inmates in Denver’s jail system.<sup>1</sup> The OIM actively monitors, participates in, and reviews the DPD’s and DSD’s Internal Affairs Bureau (IAB) investigations of critical incidents and alleged misconduct involving sworn DPD and DSD personnel; monitors and issues recommendations throughout the adjudication and disciplinary processes;<sup>2</sup> mediates complaints; and issues policy recommendations through data-driven analysis. The OIM also conducts significant outreach to the community, the DPD, and the DSD. The COB is responsible for evaluating the OIM’s performance, gauging community concerns regarding the DPD’s and the DSD’s policies and practices and issuing policy recommendations to Denver’s chief of police; the sheriff; and the executive director of safety (EDOS), the civilian head of Denver’s Department of Safety (DOS) responsible for the management and discipline of Denver’s police, sheriff, and fire departments.<sup>3</sup>

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1. The DPD is the sole municipal law enforcement agency responsible for patrolled policing in the City and County of Denver. The DSD does not have a patrol function.

2. Both the DPD’s and the DSD’s IABs assume fact-finding roles in misconduct investigations. Each department also has a Conduct Review Office responsible for reviewing the IAB investigation and issuing a preliminary adjudication and disciplinary recommendation on each case. The OIM reviews and issues findings and recommendations at each step of the disciplinary process.

3. The OIM, COB, and DOS have statutory authority to oversee and, in the case of the DOS, manage the Denver Fire Department. Because this report is focused on civilian oversight of law enforcement, the discussion that follows is limited only to the OIM’s and COB’s oversight of the DPD and DSD.

# History of Civilian Oversight in Denver

The OIM and COB were created in 2004 to replace Denver’s Public Safety Review Commission (PSRC), which was established in 1992. Community and city council concerns over several DPD misconduct-related incidents throughout the late 1980s—and the beating of a 15-year-old boy by DPD officers in 1991—spurred the formation of the Panel on Allegations of Police Misconduct by Denver’s city council. The 19-member panel, representing Denver’s minority communities, religious leaders, and legal experts, along with the DPD, solicited community testimony for the purpose of issuing a report with recommendations to Denver’s Department of Safety (DOS), mayor, and city council.<sup>4</sup> Among the panel’s recommendations was the creation of the PSRC to investigate and hold hearings on allegations of police misconduct.<sup>5</sup> Debates between the mayor, who advocated a review-focused model, and Denver’s city council, which advocated an investigation-focused model, ensued for several months before a compromise between the mayor and city council determined the final scope of the PSRC’s authority.<sup>6</sup> In August 1992, Denver’s city council voted by ordinance to create the seven-member PSRC to review the DPD’s and DSD’s IAB investigations and initiate an independent investigation if the complainant was not satisfied with the department’s investigation.<sup>7</sup> The PSRC could also recommend investigative findings and policy changes to the chief of police and sheriff. Furthermore, the PSRC had subpoena power, which was unsuccessfully challenged by the Denver Police Protective Association (DPPA), the union representing DPD officers, in 1998.<sup>8</sup>

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4. Sebastian J. Sinisi, “Panel Set to Hear Brutality Testimony,” *Denver Post*, April 6, 1991.

5. Bill McBean, “McCann Frowns on Police Review Board,” *Denver Post*, September 26, 1991.

6. Kevin Flynn, “Sandos Offers Police Review Proposal Councilman’s Version Tougher than Mayor’s, Weaker than Davis Plan,” *Rocky Mountain News*, August 12, 1992.

7. Denver, Colorado, Revised Municipal Code Chapter 2, No. 585 (1992).

8. *City and County of Denver v. Powell*, 969 P.2d 776 (Colo. App. 1998).

The PSRC was, by many accounts, weak and ineffective.<sup>9</sup> It had limited resources and a narrow authority over complaints, and often remained silent in the wake of high-profile misconduct incidents.<sup>10</sup> The mayor, director of corrections,<sup>11</sup> and police chief did not follow most of the PSRC's recommendations.<sup>12</sup>

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9. Dan Luzadder, "Safety Commission on the Hot Seat: Court of Last Resort A Court of No Results For Many Who Complain of Police Misconduct," *Rocky Mountain News*, May 21, 2000.

10. Alan Prendergast, "Unlawful Entry," *Westword*, February 24, 2000, <http://www.westword.com/news/unlawful-entry-5061822>; Dan Luzadder, "Police Oversight Panel Hobbled by Budget, Limits on Authority," *Rocky Mountain News*, May 21, 2000.

11. Until 2013, the individual who is now referred to as the sheriff was known as the undersheriff or director of corrections. For more information, see "City of Denver Public Safety Administration Amendments, Question 2C (November 2013), accessed August 3, 2020, [https://ballotpedia.org/City\\_of\\_Denver\\_Public\\_Safety\\_Administration\\_Amendments,\\_Question\\_2C\\_\(November\\_2013\)](https://ballotpedia.org/City_of_Denver_Public_Safety_Administration_Amendments,_Question_2C_(November_2013)).

12. T. R. Witcher, "Citizen's Arrest," *Westword*, June 5, 1997, <http://www.westword.com/news/citizens-arrest-5057520>.

# Genesis and Evolution of the Office of the Independent Monitor

The highly controversial and tragic shooting of a 15-year old boy with developmental disabilities by DPD officers in July 2003 prompted community outrage and significant changes in both the DPD and Denver’s public safety infrastructure.<sup>13</sup> In the aftermath of the incident, then Denver Mayor John Hickenlooper announced increased crisis intervention training (CIT) for DPD officers, accelerated deployment of less-lethal use of force (UOF) options and training, the creation of a Use of Force and Tactics Review Board to review all critical incidents, and several other changes to the DPD and Denver’s DOS.<sup>14</sup> A task force of city officials, community members, and representatives from the DPD and DSD was also convened to deliberate on revisions to the DPD’s UOF policy and on a proposal put forth by the then mayor for an independent monitor to report to the PSRC.<sup>15</sup> The independent monitor as initially proposed would be authorized to monitor internal investigations but not to conduct investigations independently.

The task force reached consensus on changes to the DPD’s UOF policy but could not agree on recommendations for establishing an independent monitor, prompting the mayor to submit three separate proposals to the Denver city council.<sup>16</sup> Among the recommendations were leaving Denver’s oversight system unchanged, with disciplinary authority remaining within the purview of the DOS; creating an Office of Civilian Review and a Public Safety Commission, which would review department investigations and have the final authority over policy, promotions, and discipline; or creating an independent monitor or auditor, which would review or audit investigations and advise on policy changes.<sup>17</sup> Community members in the task force were in favor of the second option, while the police union favored the third option—an independent monitor.<sup>18</sup>

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13. Denver Mayor’s Office Newsroom, “Mayor Hickenlooper Unveils Most Comprehensive Police Reforms in City History,” December 16, 2003.

14. Denver Mayor’s Office, “Mayor Hickenlooper Unveils Most Comprehensive Police Reforms” (see note 13).

15. Sarah Huntley, “Mayor Announces Police-Reform Proposal: Training, Less-Lethal Weapons Are Key Parts of His Plan,” *Rocky Mountain News*, December 17, 2003; Jim Spencer, “Paul Childs’ Spirit Propels Police Reform,” *Denver Post*, December 18, 2003.

16. *Denver Post* Editorial Board, “Civilian Oversight of Police on Hold: Last Reform Issue,” *Denver Post*, June 27, 2004.

17. *Denver Post* Editorial Board, “Civilian Oversight of Police on Hold” (see note 16).

18. *Denver Post* Editorial Board, “Civilian Oversight of Police on Hold” (see note 16).

The mayor's final proposal to the city council, delivered in early August 2004,<sup>19</sup> laid out plans for an independent monitor with a greater level of authority than the mayor's earlier proposals.<sup>20</sup> The proposal called for an independent monitor to observe internal investigations and the disciplinary process from beginning to end, analyze and issue recommendations on policy, and initiate independent investigations if it was not satisfied with the DPD's or DSD's internal investigations.<sup>21</sup> It also called for replacing the PSRC with a COB to evaluate the monitor and suggest policy changes.<sup>22</sup> Community reactions were mixed. Some felt that the proposal was very similar to that of the police union and were concerned about eliminating the PSRC,<sup>23</sup> while others felt that an independent monitor, if effective, could renew community trust in the city's administration and public safety departments.<sup>24</sup>

In October 2004, Denver's city council unanimously passed an ordinance creating the OIM and the COB.<sup>25</sup> The following month, Denver voters approved a ballot measure concerning amendments to the municipal charter granting the independent monitor access to departmental records and exempting its staff from civil service provisions.<sup>26</sup> In March 2005, the director of the Independent Police Review Authority in Portland, Oregon, left his post to become Denver's first Independent Monitor (IM).<sup>27</sup>

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19. Brian Crecente, "Mayor Lays Out Police Proposal: Monitor Would Join Investigations Early," *Rocky Mountain News*, August 12, 2004.

20. *Denver Post* Editorial Board, "Mayor Wants Cop Monitor: Ideas for Reform Reach Further Than Past Plans," *Denver Post*, August 12, 2004.

21. *Denver Post* Editorial Board, "Mayor Wants Cop Monitor" (see note 20).

22. *Denver Post* Editorial Board, "Mayor Wants Cop Monitor" (see note 20).

23. *Denver Post* Editorial Board, "Mayor Wants Cop Monitor" (see note 20).

24. *Denver Post* Editorial Board, "Police Oversight Plan Can Renew Public Trust: Denver Mayor John Hickenlooper's Proposal for an Independent Monitor to Review Police Discipline Cases and to Expand Civilian Input Marks a Good Beginning," *Denver Post*, August 12, 2004.

25. April M. Washington, "Council OKs Plan for Police Oversight," *Rocky Mountain News*, October 5, 2004.

26. April M. Washington, "Police Plan on Fast Track, Monitor May Be in Place in Six Months," *Rocky Mountain News*, November 4, 2004.

27. April M. Washington, "Rosenthal Headed to Denver: Hickenlooper Pick for Police Monitor Accepts Position," *Rocky Mountain News*, March 26, 2005.

In 2008, Denver’s DOS, with assistance from the OIM,<sup>28</sup> introduced a disciplinary matrix to replace the city’s “comparative discipline” system, in which past levels of discipline were used to guide deliberations on disciplinary cases.<sup>29</sup> The implementation of formalized and uniform discipline sparked tensions between the OIM, the DPPA, and subsequent EDOSs. One case, involving the unprovoked beating of a man in downtown Denver, led to the mayor requesting an FBI investigation into the incident and a public dispute between the IM and the newly appointed EDOS regarding the disciplining of involved officers.<sup>30</sup> The EDOS found the UOF to be justified and docked the officers three days’ pay for filing inaccurate reports.<sup>31</sup> The OIM, in a special report on the disciplinary decision,<sup>32</sup> asserted that—as shown by video footage of the incident—the UOF was inappropriate and the officers’ statements regarding the incident were untruthful and deceptive.<sup>33</sup> It further asserted that, based on its review of the incident, the subject officer’s lying to IAB investigators regarding the UOF warranted presumptive termination as prescribed by the disciplinary matrix.<sup>34</sup> A separate case less than three weeks later, involving a DPD officer who assaulted a volunteer firefighter and later made deceptive statements to IAB investigators, resulted in a similarly light disciplinary decision by the EDOS.<sup>35</sup> The backlash from the OIM, COB, and community members concerned that the decisions were undermining the new disciplinary matrix led to the resignation of the EDOS less than three months into his appointment.<sup>36</sup> An attorney for the DPPA claimed the vague language in the OIM’s ordinance led to a “lack of clarity to what the monitor’s role is,” resulting in the independent monitor “[stepping] outside the boundaries” of the office’s authority.<sup>37</sup>

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28. Washington, “Rosenthal Headed to Denver” (see note 27).

29. Christopher N. Osher, “Denver May Drop Policy of ‘Comparative Discipline’ for Cops,” *Denver Post*, December 16, 2007, <https://www.denverpost.com/2007/12/16/denver-may-drop-policy-of-comparative-discipline-for-cops/>.

30. Christopher N. Osher, “Son’s Beating by Denver Police Stuns Pueblo Sheriff’s Deputy,” *Denver Post*, August 17, 2010, <https://www.denverpost.com/2010/08/17/sons-beating-by-denver-police-stuns-pueblo-sheriffs-deputy/>.

31. Osher, “Son’s Beating by Denver Police” (see note 30).

32. Richard Rosenthal, *Third Quarter Advanced Special Report on Reasonableness of Findings with MOS Response* (Denver, CO: Office of the Independent Monitor, 2010).

33. Rosenthal, *Third Quarter Advanced Special Report*, 1 (see note 32).

34. Christopher N. Osher, “Second Discipline Case Erupts for Denver Safety Manager,” *Denver Post*, August 20, 2010.

35. Osher, “Second Discipline Case Erupts” (see note 34); Tom McGhee, “Cop Monitor: Penalties for Lying Too Soft,” *Denver Post*, May 6, 2011.

36. Christopher N. Osher, “Safety Manager Resigns,” *Denver Post*, August 24, 2010.

37. *Denver Post* Editorial Board, “Police Monitor Needs Free Rein,” *Denver Post*, June 6, 2012.

In October 2011, the Auditor of the City and County of Denver published a report assessing the OIM and COB's efficiency, effectiveness, and legal compliance.<sup>38</sup> The auditor found that "OIM monitoring activities are generally compliant with prescribed requirements of the ordinance's broad mandate"<sup>39</sup> and issued several recommendations regarding improving the OIM's outreach to both community members and sworn members of the DPD and DSD<sup>40</sup> as well as strengthening the COB's evaluation of the OIM using quantitative criteria.<sup>41</sup> Among the most significant findings, however, was the auditor's claim that "The [OIM] operates under a broad mandate that is problematic and prone to varying interpretations."<sup>42</sup> The auditor recommended that the OIM's ordinance "be amended to provide greater clarity as to how the OIM should publicly report on sensitive cases."<sup>43</sup>

The independent monitor resigned from his position in late 2011, and the OIM's senior deputy monitor served as the interim independent monitor while a nationwide search for a new independent monitor was conducted.<sup>44</sup> As the search for a new independent monitor continued, the mayor convened a 15-member committee to review the sections of the OIM's ordinance that Denver's auditor identified as "problematic and prone to varying interpretations."<sup>45</sup> Among the proposed amendments was one limiting the OIM's role to only minor cases involving DPD or DSD misconduct,<sup>46</sup> which would have severely constrained the independent monitor's oversight functions. The OIM's authority was ultimately left unchanged. Instead, when the new independent monitor was appointed by the mayor, the OIM and COB were appropriated additional funds to hire staff and improve the evaluation of the independent monitor.<sup>47</sup>

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38. Dennis J. Gallagher, *Office of the Independent Monitor Performance Audit* (Denver, CO: Office of the Auditor, Audit Services Division, 2011), 15.

39. Gallagher, *Office of the Independent Monitor Performance Audit* (see note 38).

40. Gallagher, *Office of the Independent Monitor Performance Audit*, 26-27 (see note 38).

41. Gallagher, *Office of the Independent Monitor Performance Audit*, 17-19 (see note 38).

42. Gallagher, *Office of the Independent Monitor Performance Audit*, 16 (see note 38).

43. Gallagher, *Office of the Independent Monitor Performance Audit*, 21 (see note 38).

44. Tom McGhee, "Denver Police-Watchdog Office 'Drowning,' Calls Grow to Hire Monitor," *Denver Post*, May 23, 2012, <https://www.denverpost.com/2012/05/23/denver-police-watchdog-office-drowning-calls-grow-to-hire-monitor/>.

45. Tom McGhee, "Committee Wrestling with Power of Denver's Independent Police Monitor," *Denver Post*, June 2, 2012, [https://www.denverpost.com/2012/06/02/committee-wrestling-with-power-of-denvers-independent-police-monitor](https://www.denverpost.com/2012/06/02/committee-wrestling-with-power-of-denvers-independent-police-monitor/).

46. McGhee, "Committee Wrestling" (see note 45).

47. Tom McGhee, "Denver Cop Watchdog Given More of a Bone," *Denver Post*, December 26, 2012.

In 2013, the OIM launched an in-depth review of the DSD's grievance process and handling of deputy misconduct allegations. The COB publicly expressed concerns that the OIM was not receiving internal memos and other documents from the DSD crucial to the OIM's review because of shortcomings in the text of the 2004 ordinance that created both the OIM and COB.<sup>48</sup> The COB and community urged the city council to amend the OIM's ordinance to ensure DPD and DSD cooperation and full and timely access to department records.<sup>49</sup> In 2015, supported by community groups backing the city's oversight agencies, Denver's city council amended the OIM's ordinance with text securing the OIM's complete access to the DPD's and DSD's records, information, documents, files, reports, evidence, databases, and other items necessary for carrying out its mandate.<sup>50</sup>

The OIM was strengthened further in 2016 when community groups including the Denver Justice Project, Colorado Latino Forum, ACLU of Colorado, and Showing Up for Racial Justice Denver pressured Denver's city council to introduce a ballot initiative that would place the OIM and the COB in the municipal charter.<sup>51</sup> The city council unanimously approved putting the charter amendment to voters, and in November 2016 the measure passed with 72 percent of the vote.<sup>52</sup> The result cemented the existence of the OIM and COB, safeguarding it from being disbanded by city officials, and codified the basic authority of both entities in Denver's city charter.<sup>53</sup>

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48. Cathy Reynolds and Mary Davis, "Civilian Oversight Board Meeting Minutes," December 9/ 20, 2013, <https://www.denvergov.org/content/dam/denvergov/Portals/64/documents/2013%20COB%20Minutes.pdf>.

49. Jennifer Kovaleski and Phil Tenser, "Denver City Council Moves Forward with Proposal to Sharpen Teeth of the City's Watchdog Office," *The Denver Channel*, February 3, 2015..

50. KGNU Community Radio, "Denver City Council Approves Amendments to Expand Authority of Independent Monitor to Investigate Law Enforcement," February 18, 2015, <http://news.kgnu.org/2015/02/denver-city-council-approves-amendments-to-expand-authority-of-office-of-independent-monitor/>.

51. Michael Roberts, "Proposal to Put Independent Monitor's Office in Denver Charter Makes Ballot," *Westword*, August 16, 2016, <http://www.westword.com/news/proposal-to-put-independent-monitors-office-in-denver-charter-makes-ballot-8200241>.

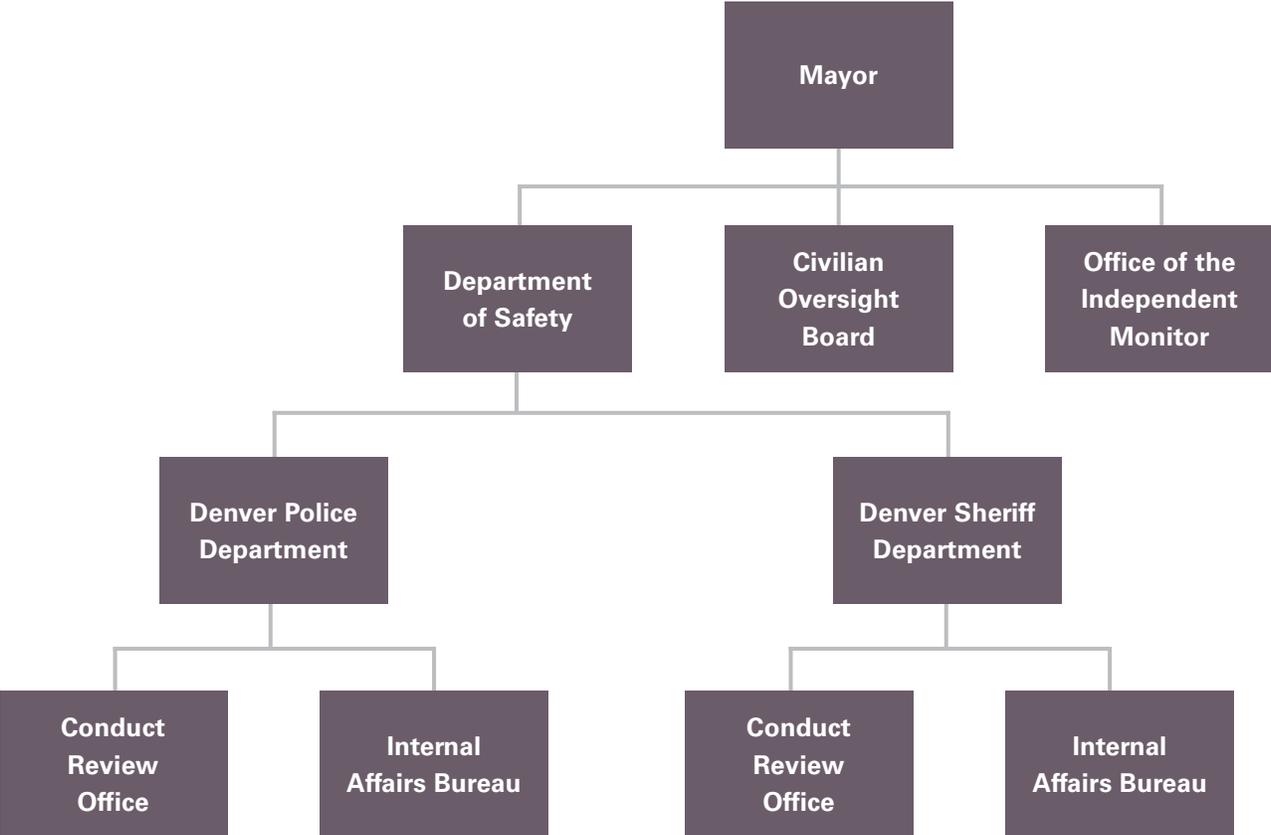
52. City and County of Denver, "Denver Election Results: General Election November 8, 2016," last modified November 22, 2016, <https://www.denvergov.org/electionresults#/results/20161108>.

53. The OIM and COB's basic roles and authority were placed in the charter; however, their duties and procedures are prescribed by ordinance.

# Structure of Civilian Oversight System in Denver

The OIM operates within the City and County of Denver’s unique public safety infrastructure, which encompasses several municipal entities involved in investigative and disciplinary procedures relating to sworn public safety personnel. Figure 1 depicts the structure and organization of the stakeholders most involved in the local disciplinary system. As shown in figure 1, the OIM and the COB are structurally independent from Denver’s DOS, which has full charge and control of both the police and sheriff departments. The OIM and COB prepare annual reports for Denver’s city council and mayor but are not directly supervised by either.

Figure 1. Structure of civilian oversight system in Denver



## Denver Department of Safety

Denver's DOS is a central stakeholder in Denver's public safety system. It provides administrative support and promotes efficiency, customer service, and accountability to the public safety agencies under its authority.<sup>54</sup> Through Denver's municipal charter, the DOS has full charge and control of the sheriff, police, and fire departments.<sup>55</sup> The police chief and sheriff, appointed by the mayor, report to the civilian head of the DOS, the EDOS. Also a mayoral appointee, the EDOS serves as the final authority on all disciplinary matters involving public safety personnel after considering recommendations from the OIM and the Conduct Review Offices (CRO) of either the police or sheriff department.<sup>56</sup>

## Citizen Oversight Board

The COB, created with the OIM in 2004, is the seven-member civilian body responsible for relaying community concerns to the OIM, EDOS, chief of police, and sheriff; issuing recommendations regarding the DPD and DSD's policies, training, hiring practices, community relations, and complaint processes; and annually evaluating the effectiveness of the OIM.<sup>57</sup>

As shown in figure 1, the COB is structurally independent from the OIM. Despite this separation, the entities have a strong working relationship and interact regularly. Nonetheless, because this report focuses primarily on the OIM, this section on the COB will provide only a surface-level description of the COB's work and how it interfaces with the OIM.

By ordinance, the COB is to be kept apprised of the OIM's work in monitoring IAB investigations and disciplinary proceedings.<sup>58</sup> The COB (and the EDOS) may also request that the OIM review closed IAB cases that the OIM did not monitor.<sup>59</sup> The OIM also provides occasional support to the COB in developing its own policy recommendations.

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54. The DOS has authority over Denver's Safety Management and Safety Programs agencies, police department, sheriff, fire department, and 911 emergency communications center. For the purposes of this report, any discussion of the DOS will refer exclusively to the operations of the sheriff and police departments unless stated otherwise.

55. As noted earlier in this report, the OIM and COB are authorized to provide oversight of the DPD, DSD, and Denver Fire Department. For the purposes of this report, however, discussion of both entities will be limited solely to oversight of the DPD and DSD.

56. This excludes reprimands for low-level offenses. The disciplinary process is described in greater detail in the Procedures section of this report.

57. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-377.

58. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-383(a).

59. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-373(d).

The mayor appoints all seven volunteer board members, subject to confirmation by city council.<sup>60</sup> The mayor may remove a board member at any time for cause.<sup>61</sup> Members must be residents of the City and County of Denver and may not be employed by the City and County of Denver.<sup>62</sup> Members, or any of their immediate family members, may not be current or former employees of the police, sheriff, or fire departments.<sup>63</sup> The COB ordinance also stipulates that members must reflect the racial, ethnic, geographic, and occupational diversity of Denver. Members serve staggered four-year terms with no term limits.<sup>64</sup>

Board members must participate in a training program established by its members, the OIM, or both to obtain the knowledge necessary to conduct their duties.<sup>65</sup> Training to date has largely taken the form of attending annual conferences and regional training events hosted by the National Association for Civilian Oversight of Law Enforcement (NACOLE). The COB plans to develop a training curriculum that will require members to participate in ride-alongs, attend the Denver Police Academy, read specified texts and articles, and review the OIM and COB's statute and history.<sup>66</sup>

By ordinance, the COB must hold at least three public meetings per year<sup>67</sup> to solicit community concerns, relay to the public the accomplishments and activities of the board, and inform community members about the activities of the DPD and DSD. The board must also meet with the OIM bi-monthly<sup>68</sup> and publicly with the EDOS, chief of police, and sheriff on a quarterly basis to discuss any community concerns or recommendations regarding policies and practices of both departments.<sup>69</sup> Meeting agendas are often coordinated with the OIM, and OIM staff often attend COB meetings.

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60. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-378.

61. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-380.

62. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-378(c).

63. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-378(d).

64. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-379(a).

65. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-378(g).

66. Citizen Oversight Board, "2017 COB Meeting Minutes," July 7, 2017, <https://www.denvergov.org/content/dam/denvergov/Portals/64/documents/2017%20COB%20Minutes.pdf>.

67. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-382(a). This section of the COB ordinance requires that one of these meetings must be held no later than 30 calendar days after the issuance of the COB's annual report.

68. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-382(b).

69. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-382(c).

The COB is also required to publish annual reports detailing its yearly accomplishments and evaluation of the OIM.<sup>70</sup> It may also publish additional items such as issue-specific reports and letters sent to stakeholders regarding specific community concerns with the DPD and DSD's policies and practices. Past publications have detailed, for example, the COB's reiteration of community concerns regarding the DSD's policies and practices concerning breastfeeding in Denver's detention centers<sup>71</sup> and its input on the DPD's body-worn camera (BWC) pilot program.<sup>72</sup>

The COB has been required to evaluate the OIM since its inception in 2004.<sup>73</sup> In its early years, this evaluation took the form of a 12-question survey issued anonymously to both the COB and OIM staff.<sup>74</sup> In 2010, the COB began supplementing the survey with quantitative evaluation measures of the OIM's workload.<sup>75</sup> Following the Auditor of the City and County of Denver's 2011 recommendation that the COB conduct a more thorough evaluation of the OIM,<sup>76</sup> the COB hired a consultant to develop a robust set of metrics by which it could assess the OIM's performance.<sup>77</sup> In developing these metrics, board members, the chief of police, sheriff, EDOS, independent monitor, and OIM staff were interviewed by the consultant.<sup>78</sup>

The COB currently uses a multifaceted approach to evaluating the OIM: a qualitative and quantitative survey of OIM staff; a separate qualitative survey of COB members; a questionnaire sent to the DOS, police chief, and sheriff; and a series of quantitative performance measures.<sup>79</sup> OIM staff rate the independent monitor on a 1–5 scale based on factors including the independent monitor's vision, strategy, leadership, and job knowledge. The COB member survey calls

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70. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-384(a).

71. Katina Banks et al., "Follow-up Concerns Raised at COB Forum about the DSD's Nursing Mother Policy and Practices," *Citizen Oversight Board*, November 15, 2017, [https://www.denvergov.org/content/dam/denvergov/Portals/64/documents/2017.11.15\\_Nursing%20Mothers%20Letter\\_Final.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/64/documents/2017.11.15_Nursing%20Mothers%20Letter_Final.pdf).

72. *2017 Annual Report* (Denver: Citizen Oversight Board, 2018), <https://www.denvergov.org/content/dam/denvergov/Portals/64/documents/2017%20Annual%20Report.pdf>.

73. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-377(b)(1).

74. *2008 Annual Report* (Denver: Citizen Oversight Board, 2009), 5.

75. *2010 Annual Report* (Denver: Citizen Oversight Board, 2011), 7–8.

76. Gallagher, *Office of the Independent Monitor Performance Audit*, 17–19 (see note 38).

77. *2013 Annual Report* (Denver: Citizen Oversight Board, 2014), 5–6, [https://www.denvergov.org/content/dam/denvergov/Portals/64/documents/COB\\_2013\\_Annual\\_Report\\_FINAL.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/64/documents/COB_2013_Annual_Report_FINAL.pdf).

78. *2013 Annual Report*, 5–6 (see note 77).

79. *2017 Annual Report*, 11 (see note 72).

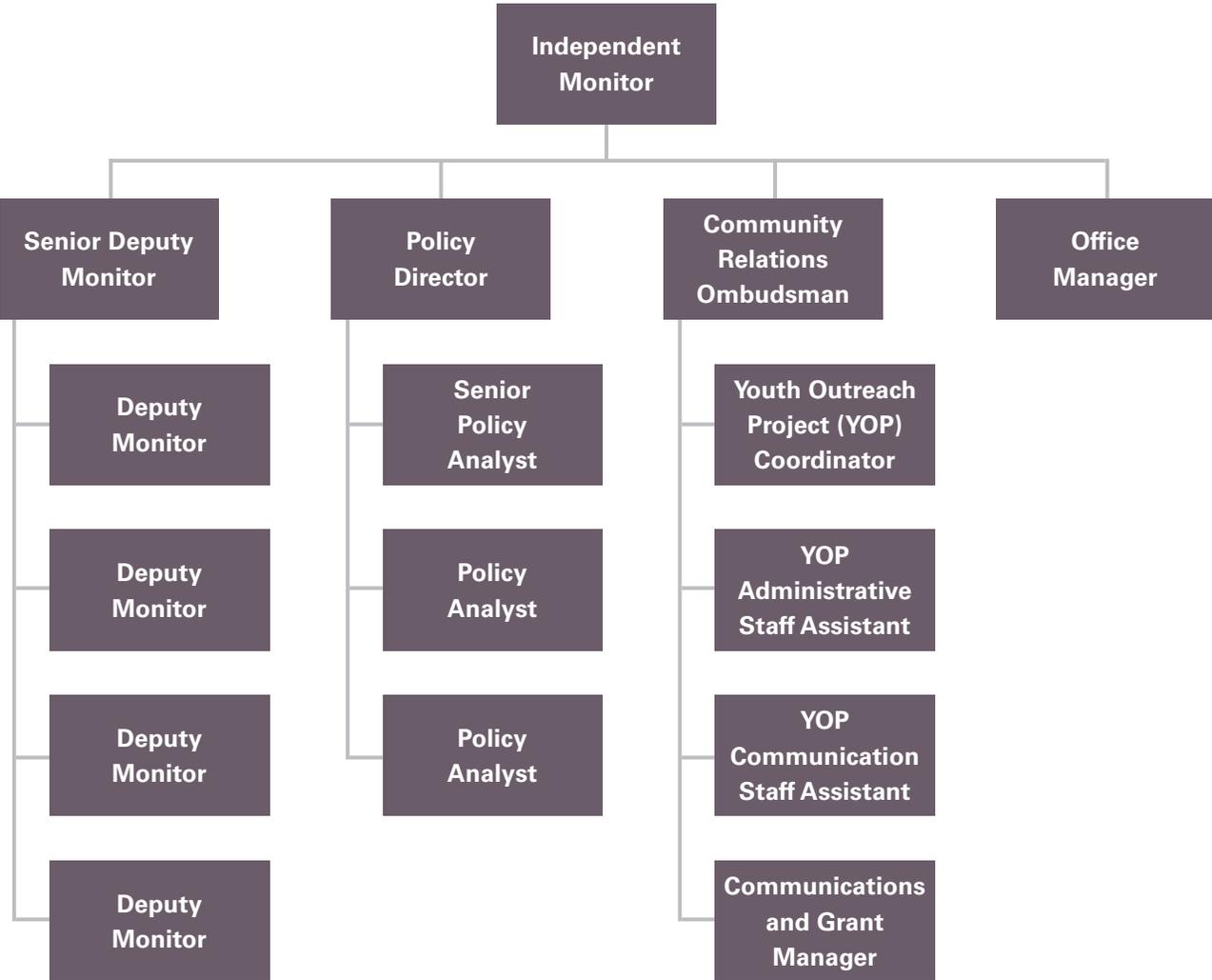
for evaluation of the IM's performance according to a qualitative scale (outstanding, satisfactory, and unsatisfactory), including the OIM's monitoring and outreach, policy recommendations, mediation program, public reporting, and overall management.

The quantitative measures used in the OIM's evaluation assess the overall workload of the OIM and several annual performance measures in relation to goals established by the COB in the previous year.

# Structure of the Office of the Independent Monitor

When the OIM first started its work, it was staffed by six full-time professionals.<sup>80</sup> In the fall of 2017, the OIM employed 14 full-time equivalent employees and two part-time, tenure-limited grant-funded staff. As the organizational chart in figure 2 shows, OIM employees work in dedicated monitoring, policy, and community outreach units. Units work collaboratively and discuss matters of concern identified throughout their work.

**Figure 2. Structure of the Office of the Independent Monitor**



80. *Annual Report 2008* (Denver: Office of the Independent Monitor, 2009), 3.

## Recruitment and removal of the Independent Monitor

Recruiting candidates for the position of the IM involves several stakeholders within the City and County of Denver, with the final appointment decision left to the mayor. A five-person screening committee—consisting of the COB chair, a city council member selected by the city council president, a judge selected by the mayor, the Executive Director of the Office of Human Resources, and an individual with knowledge of conducting or monitoring internal investigations selected by the mayor—is tasked with interviewing and evaluating candidates for the position.<sup>81</sup> The screening committee then publicizes and forwards the names of the top three candidates to the mayor’s office, who appoints the IM from the list the committee provides.<sup>82</sup> The city council must approve the mayor’s final selection. The IM serves at the pleasure of the mayor, who must consult with the COB and city council regarding any decision to remove the IM.<sup>83</sup>

The ordinance requires that the IM develop standards of professional conduct and a comprehensive training program for its own staff.<sup>84</sup> The purpose of these standards and training is to ensure that staff can effectively evaluate the adequacy of internal investigations and make recommendations regarding policy violations, imposing discipline, or suggesting policy and training changes.

## Deputy monitors

The OIM has one senior deputy monitor and four deputy monitors working under the direction of the IM. Deputy monitors are typically attorneys who may have prosecutorial, advocacy experience, or both.

Deputy monitors are responsible for actively monitoring interviews during the DPD’s and DSD’s IAB investigations, reviewing completed IAB investigations, and responding to critical incidents.<sup>85</sup> The senior deputy monitor is also responsible reviewing the findings of both the DPD’s and DSD’s CRO findings and disciplinary recommendations and preparing a response memo on behalf of the IM.

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81. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-372(b).

82. The mayor may request the screening committee to name additional candidates if he or she decides not to appoint any of the three candidates initially named by the committee.

83. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-372(f).

84. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-371(c).

85. Critical incidents are defined as officer-involved shootings or in-custody deaths.

## Policy analysts

The OIM's policy unit consists of two policy analysts and one senior policy analyst working under the direction of the Policy Director and the IM. Analysts typically have varied backgrounds in the social sciences, criminal justice, and experience conducting applied quantitative and qualitative research.

Policy staff play a crucial role in the OIM's analysis of the DPD's and DSD's practices and work on policy recommendations. They generate weekly and monthly internal reports on DPD and DSD complaints and discipline, analyze trends and patterns over time, assist the IM with drafting reports, research best practices in law enforcement and civilian oversight, and develop methodologies to assess and evaluate DPD and DSD policies. OIM policy analysts have also provided technical assistance to various DPD- and DSD-related internal taskforces and reform committees, such as the DSD's Use of Force Committee and Discipline Task Force and the DPD's Use of Force Policy Group and subcommittee on biased-policing data.

## Community outreach

The OIM's outreach unit is led by a community relations ombudsman, a position that was full-time from 2005 to 2009 until budget cuts resulted in reducing it to a half-time position.<sup>86</sup> In 2013, after the mayor authorized additional funds for OIM personnel<sup>87</sup> following the City and County Auditor's 2011 report recommending that the OIM improve its outreach to the community and sworn personnel, the community relations ombudsman position was restored to full time.

As of the writing of this report, the OIM's Community Outreach Unit was composed of three full-time staff and two part-time positions. One outreach position is funded through grant funds dispersed by the Bureau of Justice Assistance (BJA) and the Colorado Department of Public Safety's Justice Assistance Grant Board; three other positions are funded by other grants received by the OIM. These funds are used to develop and maintain the OIM's youth outreach project *Bridging the Gap: Kids and Cops*, described in the Procedures section of this report.

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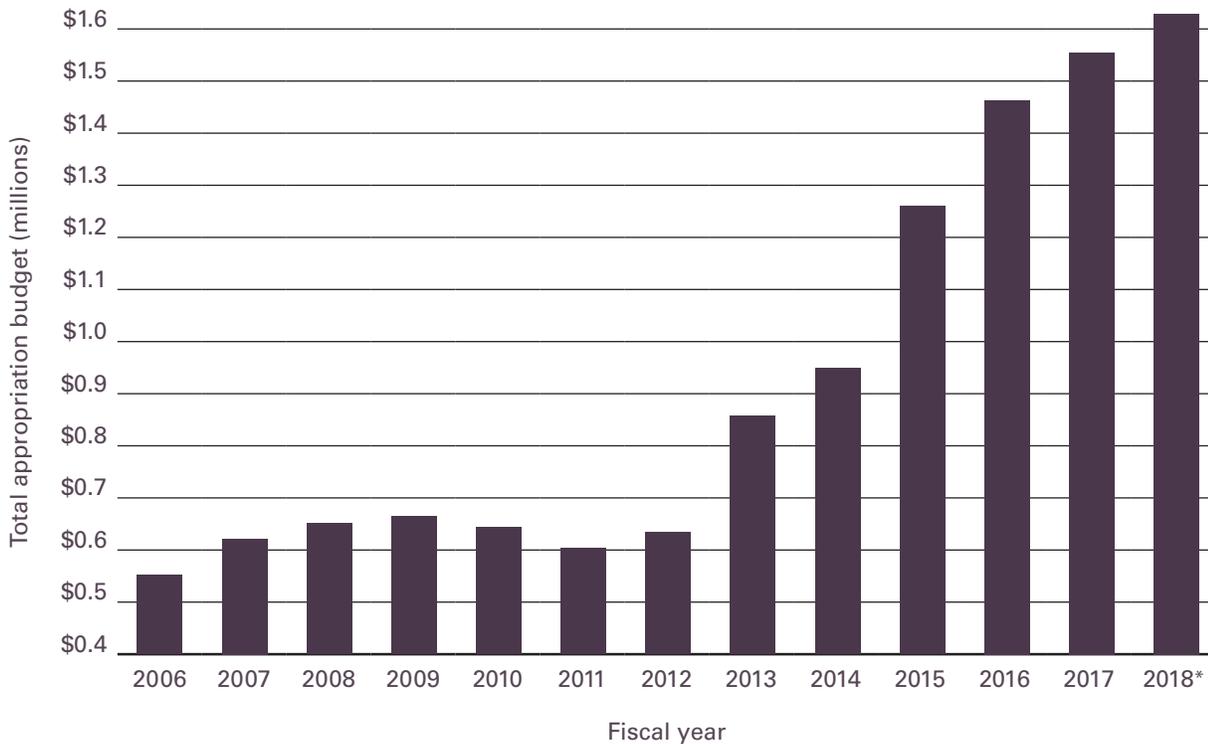
86. *Annual Report 2010* (Denver: Office of the Independent Monitor, 2011), 8.

87. *Annual Report 2012* (Denver: Office of the Independent Monitor, 2013), 8, [https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2012AnnualReport\\_OIM.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2012AnnualReport_OIM.pdf).

## Budget

The OIM’s first operating budget in 2005 was \$400,000 from the City and County of Denver’s General Fund. This consisted of \$246,489 directly allocated to the new office, \$124,900 from PSRC (which sunset in May 2005), and additional funds for supplies and materials.<sup>88</sup> As shown in figure 3, the OIM’s annual budget has more than tripled since. This upwards trajectory, which accelerated in 2014, has been attributed to an increase in complaint volume, which subsequently increased the OIM’s workload and necessitated the addition of several full-time positions.

**Figure 3. OIM budgets by fiscal year, 2006–2018**



\* 2018 recommended budget

Source: City and County of Denver Mayor’s Budgets, 2006 to 2018.

88. John W. Hickenlooper, *2007 Budget* (Denver: Office of the Mayor, 2006).

# Scope of Authority

- A**s summarized in its annual and semiannual reports, the OIM is responsible for
- ensuring the DPD’s and DSD’s complaint and commendation processes are accessible to all community members;
  - monitoring the DPD’s and DSD’s investigations into community complaints, internal complaints, and critical incidents involving sworn personnel;
  - making recommendations on complaint findings and discipline;
  - publicly reporting information regarding patterns of complaints, findings, and discipline;
  - making recommendations for improving police and sheriff policies, practices, and training;
  - conducting outreach to the Denver community and stakeholders;
  - promoting alternative and innovative means for resolving complaints, such as mediation.<sup>89</sup>

## Monitoring investigations of sworn DPD and DSD personnel

In Denver, the IABs of both the DPD and DSD perform preliminary complaint investigations, classifying complaints;<sup>90</sup> defining “specifications” (departmental policies that may have been violated) associated with the complaint; and conducting the full, formal investigation. The OIM has broad authority to review an IAB’s preliminary investigations and classification decisions and actively monitor, participate, and issue recommendations on civilian and internal complaint investigations of sworn DPD and DSD personnel. This includes a discretionary authority to

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89. 2017 Annual Report (Denver: Office of the Independent Monitor, 2018), [https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2017AnnualReport\\_OIM.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2017AnnualReport_OIM.pdf).

90. As described in greater detail in the Procedures section of this report, the complaint classification process determines how a complaint will be handled. IAB classification decisions include decline (incident did not occur or there is insufficient evidence to proceed with a formal investigation), informal (minor procedural violations which are investigated by the subject officer’s supervisor), service complaint (general department policy concerns); mediation (referral of low-level complaints to the OIM’s mediation program), or formal (a misconduct allegation requiring a full investigation and disciplinary review).

actively monitor any investigation by the DPD's or DSD's IABs<sup>91</sup> deemed by the office to be in the city's best interest, including allegations of improper UOF, discrimination, retaliation, and discourtesy.<sup>92</sup> The OIM is also required, when requested by either the EDOS or the COB, to actively monitor an open investigation<sup>93</sup> or to review a closed investigation it did not originally actively monitor.<sup>94</sup> OIM monitors may be present on scene at critical incidents.<sup>95</sup>

In addition, the OIM's enabling ordinance mandates that it monitor criminal investigations of certain incidents conducted by any of the City and County of Denver's law enforcement agencies, including the Denver district attorney.<sup>96</sup> These incidents include

- any shooting involving sworn personnel, whether duty-related or not;
- any in-custody death;
- any duty-related incident involving death or serious bodily injury as defined by Colorado Revised Statute § 18-1-901(3)(p);
- any incident, whether or not duty-related, in which sworn personnel are under investigation for or charged by any jurisdiction with a felony;
- any incident, whether or not duty-related, in which sworn DPD or DSD personnel are under investigation or charged by any jurisdiction of any crime set forth in Colorado Revised Statute § 18-3 (homicide, assault, kidnapping, unlawful sexual behavior, human trafficking and slavery, and stalking);
- any incident, whether or not duty-related, in which sworn DPD or DSD personnel are under investigation for or charged by any jurisdiction with a misdemeanor or local law violation in which a use of force or threatened use of force is an element of the offense.

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91. The OIM also has the authority to monitor investigations of sworn fire department personnel, but this is rare. For the purposes of this report, the OIM's authority and procedures will be focused solely on monitoring of the DPD and the DSD.

92. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-374(a).

93. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-373(d).

94. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-373(f).

95. Critical incidents are defined as officer-involved shootings or in-custody deaths.

96. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-373(a).

For any internal investigation involving sworn DPD or DSD personnel, the OIM may be present to actively monitor interviews with witnesses and other individuals related to the investigation.<sup>97</sup> During the course of an investigation, the OIM may request that the appropriate department's IAB conduct additional investigative steps when it determines that the IAB investigation has not been sufficiently thorough and complete. If the IAB fails to conduct the additional investigation to the OIM's satisfaction or when the OIM reviews a closed IAB investigation as directed by the COB or EDOS, the OIM may conduct additional investigation into the incident on its own.

### **Review of DPD and DSD conduct review office findings and role in disciplinary process**

IAB investigations deemed sufficiently thorough by the OIM are then sent to the appropriate department's Conduct Review Office<sup>98</sup> (CRO) for the purposes of initial adjudication of policy violations, recommendation of discipline, and initiating disciplinary proceedings. By ordinance, the police and sheriff departments must allow the OIM to attend and actively monitor disciplinary proceedings and issue recommendations throughout the disciplinary process.<sup>99</sup> This authority extends to "service complaints," which are not investigated formally by IAB,<sup>100</sup> and special cases in which a third-party investigator conducts the investigation in lieu of a formal IAB investigation.<sup>101</sup>

In practice, the OIM is authorized to review the CRO's adjudication of each specification and any associated disciplinary recommendations. After the deliberations of the CRO it issues preliminary findings and recommendations. A final set of findings and disciplinary recommendations is then issued to the EDOS who—following a pre-disciplinary hearing (for DPD officers)

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97. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-388.

98. The DPD CRO was created in 2012. The DSD CRO was created in 2013.

99. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-389.

100. As will be explained in greater detail in the Procedures section of this report, not all complaints against sworn DPD or DSD personnel are investigated by the IAB. Service complaints for minor procedural violations of DPD policy or informal complaints against either DPD or DSD personnel for low-level offenses are investigated at the DPD command level or debriefed with the subject DSD deputy, respectively. The OIM still reviews service complaints to DPD prior to case closure and monitors the DSD grievance intake screening process.

101. Such instances may include investigations into the chief of police or sheriff.

or a Contemplation of Discipline Meeting (for DSD deputies)—has the final say on all discipline. The disciplinary process, including the OIM’s role in it, is described in greater detail in the Procedures section of this report.

## **Policy recommendations**

The OIM may at any time issue recommendations to the chief of police, sheriff, or EDOS on revised or new DPD and DSD policies and training.<sup>102</sup> Because policy recommendations are issued in an advisory capacity only, the EDOS, the DPD, and the DSD have no statutory requirement to respond to the OIM’s recommendations. The OIM is often invited by city stakeholders to provide input and technical guidance on DPD and DSD policies and practices to many reform-oriented committees convened by municipal actors.

## **Public reporting**

The OIM’s ordinance requires that it publicly publish and submit to the mayor and city council an annual report detailing the office’s accomplishments for the year and trends in complaints, investigations, and discipline.<sup>103</sup> These reports must include, in statistical and summary form and without identifying specific individuals, information on sworn personnel who have been the subject of multiple complaints, complainants who have submitted multiple complaints, issues identified by multiple complaints, appropriateness of disciplinary actions, and any other OIM policy recommendations.

The OIM may also publish ongoing status reports based on its analyses of departmental policies, the complaint system, and disciplinary processes.<sup>104</sup> In practice, the OIM uses this authority to publish semiannual reports and special reports relating to issues that may be of concern to the community.

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102. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-371(b).

103. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-375(a).

104. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-375(c).

## Access to information

The original 2004 OIM ordinance granted the agency access to DPD and DSD records through a requirement that both departments establish policies ensuring cooperation with the OIM’s active monitoring of and participation in internal investigations. The ordinance mandated:

“These policies shall provide for, among other things, complete access to interviews of witnesses including sworn personnel, IAB files, personnel files, and other evidentiary items but not including documents protected by the attorney-client privilege and the attorney work product privilege.”<sup>105</sup>

In 2015, after the OIM publicly raised concerns<sup>106</sup> over its inability to obtain certain DSD documents throughout its review of the DSD’s grievance process, Denver’s city council drafted an amendment to the OIM ordinance provision granting the office access to DPD and DSD records. The new section requires that employees of the DOS, DSD, and DPD

“shall fully cooperate with the Monitor’s office by providing the Monitor’s office, within a reasonable amount of time, complete access to police department, sheriff department, and fire department records, information, documents, files, reports, evidence, databases, and all other items, whether in paper, electronic, or other form, that the Monitor’s office requests in order to perform its duties.”<sup>107</sup>

This 2015 provision has strengthened the OIM’s ability to obtain both the DSD and DPD records. However, access remains uneven largely because of documented DSD data collection and quality issues.<sup>108</sup>

The OIM staff have front-end access to both the DPD’s and DSD’s internal affairs databases, as well as back-end access to each department’s internal affairs databases for the OIM’s policy unit staff. The policy unit’s back-end access allows it to run custom queries on the entire internal affairs database. Front-end access to internal affairs databases permits OIM staff to view and search cases and generate standard summary reports of IAB investigations. Back-end access

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105. Council of the City and County of Denver Ord. No. 730-04, § 1, 10-4-04.

106. *2013 Annual Report*, 4 (see note 77).

107. Denver, Colorado, Revised Municipal Code Art. XVIII § 2-390(a).

108. *New Vision, Brighter Future: The Denver Sheriff Department* (Chicago: Hillard Heintze, 2015), [http://extras.mnginteractive.com/live/media/site36/2015/0521/20150521\\_111951\\_Report-Denver-Sheriff-Department.pdf](http://extras.mnginteractive.com/live/media/site36/2015/0521/20150521_111951_Report-Denver-Sheriff-Department.pdf).

allows policy unit staff to run custom queries of the database across various criteria. As the DSD revamps its data infrastructure, the OIM will also have live access to its electronic grievance system.<sup>109</sup> The office also has regular access to the DPD's and DSD's personnel records and the DPD's early-warning system.<sup>110</sup>

The OIM may request the DPD to provide UOF, stop and search, and computer-aided dispatch records and body-worn and in-car camera footage. When relevant to a particular complaint investigation, the OIM can access DSD inmate records, UOF records, and camera footage from DSD detention centers. The OIM may issue subpoenas, however but this power is rarely used.

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109. *Annual Report 2016* (Denver: Office of the Independent Monitor, 2017), 41, [https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2016AnnualReport\\_OIM.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2016AnnualReport_OIM.pdf).

110. The DSD does not have an early-warning system for its deputies.

# Procedures

## **Complaint intake and monitoring of IAB screening decisions**

Complaints or commendations regarding uniformed DPD and DSD personnel can be submitted by members of the public or DPD or DSD personnel either to the OIM or to the DPD's or DSD's IABs. Complaint/Commendation forms with prepaid postage are available in English and Spanish at more than 60 locations throughout the City and County of Denver, including city council offices, government agencies, community centers, jails, police stations, schools, courts, and other locations.<sup>111</sup> Complaints and commendations may also be filed online, by phone or fax, or via email.

Complaints concerning DSD deputies are a subset of the overall grievances inmates may file concerning the conditions of their confinement. Grievances may address various conditions within the correctional facility such as the quality of food and medical care. Grievances containing allegations of DSD deputy misconduct are treated as complaints and are handled according to the procedures described in this section. Inmates may also initiate complaints by calling the OIM directly for free.

The OIM forwards complaints it receives to the appropriate IAB for review and screening. Both the DPD and DSD enter complaints into their respective IAPro databases, accessible to the OIM in real time. The OIM may, in certain cases, enter complaints concerning sworn DPD personnel directly into the department's IAPro database. The respective IABs then classify and categorize complaints to determine how each complaint will be handled.

The DPD categorizes complaints against sworn DPD personnel as community complaints, internal complaints, or scheduled discipline complaints. Scheduled discipline complaints involve low-level misconduct—such as missing a court date or failing to activate the BWC when required

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111. *Annual Report 2016*, appendix B (see note 109).

by policy—and are subject to discipline according to a set of predetermined disciplinary sanctions. The DPD disciplinary matrix is used for more serious incidents of misconduct.<sup>112</sup> The OIM does not typically monitor scheduled discipline complaints except when they relate to matters of community concern, such as adherence to the DPD’s BWC policy.

The DSD categorizes complaints against sworn DSD personnel as community complaints, inmate complaints, management complaints, and employee complaints. Community complaints originate from community members who are not inmates; management complaints are those filed by a DSD supervisor, a command officer, or the IAB; and employee complaints stem from civilian DSD employees making allegations against DSD deputies.<sup>113</sup>

For both the DPD and DSD, the OIM monitors IAB intake outcomes and the subsequent classification of each complaint. Complaints against sworn DPD officers fall under five classifications:

1. **Declined** complaints either contain no allegation that violates DPD policy, appear not to have occurred following a preliminary investigation, or lack sufficient evidence to proceed with a formal investigation. The OIM reviews every complaint the DPD IAB intends to decline.
2. **Formal** complaints allege misconduct under DPD policy and require a full IAB investigation and disciplinary review. The OIM actively monitors certain investigations and reviews all formal investigations once complete.
3. **Informal** complaints allege minor procedural violations that do not rise to the level of official misconduct. Such complaints are investigated at the district level rather than through IAB. The OIM reviews the completed district-level investigation and may recommend further investigation if deemed necessary.
4. **Service** complaints contain general concerns with DPD policies or services rather than an individual allegation against a DPD officer. The OIM reviews all service complaints prior to closure.
5. **Mediation** complaints allege relatively non-serious misconduct, such as rudeness or discourtesy. IAB refers a complaint eligible for mediation to the OIM, which determines whether the complaint is appropriate for mediation. Additional information on the OIM’s mediation program follows in the proceeding section.

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112. *Operations Manual* (Denver: Denver Police Department, n.d.), 503.01, [https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBook/OM\\_Book.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBook/OM_Book.pdf).

113. *Annual Report 2017*, 30 (see note 89).

DSD complaints also fall under five classifications, which are handled similarly unless stated otherwise: (1) declined, (2) formal, (3) informal, (4) referred, and (5) mediation. Although the definitions of the DSD classifications are similar to the DPD's, informal DSD complaints result in a briefing with the subject deputy; referred complaints are referred to another agency for review and handling; and mediation complaints are referred to the OIM for mediation according to the procedures outlined in the proceeding section of this report. The DSD does not mediate complaints filed by inmates because of security concerns.

The OIM has developed guidelines outlining the division of labor between its office and each department's IAB regarding intake, screening, preliminary investigation, and referral to mediation.<sup>114</sup> The OIM reviews IAB screening decisions entered into IAPro on a daily basis. When the OIM disagrees with either the DPD's or DSD's IAB's classification of a complaint, it will make recommendations to IAB command staff and, if necessary, the appropriate department's command staff, up to and including the EDOS.<sup>115</sup>

## **Mediation**

The OIM/DPD mediation program has been operational since 2006 and to date has facilitated more than 495 mediations between DPD officers and civilians. The OIM's community relations ombudsman and a deputy monitor manage the program, and the OIM uses the services of a third-party mediation vendor contracted to conduct all mediations on behalf of the City and County of Denver.

Complaints regarding either DPD or DSD sworn personnel can be mediated; however, in practice, DSD mediations are rare.<sup>116</sup> DSD has historically not mediated inmate-deputy complaints because of security concerns, and most DSD complaints that are mediated result from incidents that occur between DSD staff members.<sup>117</sup>

Printed Complaint/Commendation forms include a checkbox for complainants to indicate whether they are interested in having their complaint mediated. Complaints that may be eligible for mediation are identified during the IAB screening process or by OIM staff. DPD's guidelines

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114. *Complaint Monitoring Guidelines* (Denver: Office of the Independent Monitor, 2010).

115. *Complaint Monitoring Guidelines*, §3(6) (see note 114).

116. *Annual Report 2016*, 46 (see note 109).

117. *Annual Report 2016*, 82 (see note 109).

state that a complaint may be considered for mediation “if it resulted from a failure to communicate or a lack of communication such that the allegation would be resolved better through mediation,”<sup>118</sup> such as rudeness or discourtesy. Complaints alleging more serious misconduct or abuse of authority are not eligible for mediation.

When the IAB recommends a complaint for mediation, the OIM reviews it to determine whether mediation is appropriate. If the OIM agrees that the complaint is eligible for mediation, the complainant and the subject officer must agree to mediation for the mediation to take place. In certain cases,<sup>119</sup> the EDOS and chief of police must also agree that a complaint is eligible for mediation. The chief or EDOS (or both) can also veto any complaint’s eligibility for mediation. If the OIM, complainant, or the officer do not agree to the mediation, the complaint will be returned to the IAB and handled according to standard complaint procedure. A complaint is dismissed after a mediation takes place, even if the parties do not agree that the mediation session has resolved the issues raised. Officers and civilians are asked to complete a survey<sup>120</sup> detailing their satisfaction with the mediation process and its outcome. According to the survey results, complainants and officers have overall been satisfied with the outcome of their mediation.<sup>121</sup>

## **Monitoring and reviewing formal investigations**

The OIM regularly reviews IAPro databases for new open cases, and because active monitoring is resource-intensive, the OIM monitors only formal complaints alleging serious misconduct or complaints involving conduct the OIM has deemed to be a concern of the community. As mandated by ordinance, the OIM must monitor investigations into alleged criminal conduct as listed in the Scope of Authority section of this report.

When the OIM actively monitors IAB investigations, it is involved in nearly every step of the IAB investigation. Deputy monitors review evidence collected by investigators, observe interviews through live video feeds, discuss recommendations or concerns related to the investigation with the assigned investigator, and advise on the overall direction of the investigation.

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118. *Operations Manual*, 503.01(5) (see note 112).

119. *Operations Manual*, 503.01(5) (see note 112). These cases include allegations of “conduct substantially contrary to the values of the department or that substantially interferes with its mission, operations or professional image, or that involves a demonstrable serious risk to officer or public safety.”

120. Community-Police Complaint Mediation Survey, <https://www.surveymonkey.com/r/CPMediations>.

121. *Annual Report 2016*, 7 (see note 109).

For investigations involving DSD deputies, OIM deputy monitors may electronically submit questions relevant to the investigation directly to the investigator. Where a DPD IAB interview involves a set of written questions and officer responses, deputy monitors can recommend questions before the interview takes place.

Throughout the course of an actively monitored investigation, the OIM will recommend that IAB take additional investigative steps until the OIM has determined that the completed case is sufficiently thorough. If the IAB does not conduct the requested additional investigation, the OIM may conduct the additional investigation on its own. In the rare case that this occurs, the OIM notifies the COB, EDOS, and police chief or sheriff that it was not satisfied with the IAB investigation and its intentions regarding additional investigation.

Even when formal complaints are not flagged for active monitoring, the OIM reviews all completed IAB formal investigations for thoroughness, before the appropriate department's IAB submits the investigation to its Conduct Review Office (CRO) for adjudication and disciplinary recommendations.

### **Monitoring and reviewing critical incident investigations**

In the event of a critical incident involving either the DPD or DSD—defined as an officer-involved shooting or in-custody death—the DPD's Major Crimes Unit, the Denver District Attorney's Office, and (in the event of an officer-involved shooting) representatives from the neighboring Aurora Police Department respond to the scene immediately to determine whether any person should be held criminally liable.<sup>122</sup> An OIM deputy monitor may also arrive on scene after being dispatched by Denver's 911 call center. If a deputy monitor does not respond to the scene immediately, they will begin monitoring either the DPD's or the DSD's IAB interviews and visit the scene once interviews are completed. When on scene, deputy monitors receive a briefing and walk-through by command staff.<sup>123</sup>

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122. *Annual Report 2017*, 73 (see note 89).

123. *Annual Report 2017*, 73 (see note 89).

The DPD's Major Crimes Unit and the Denver District Attorney's Office investigate all critical incidents involving DPD officers or DSD deputies. The OIM actively monitors all interviews and may suggest additional questions at the conclusion of each officer interview, similar to the active monitoring procedures described in the preceding section.

Once the district attorney's office issues a decision regarding the filing of criminal charges against anyone involved in the incident, the DPD's Major Crimes Unit releases all investigative files to the relevant department's IAB for administrative review. Throughout the administrative review, the OIM issues recommendations on the investigation to the IAB about any potential violations of departmental policy.<sup>124</sup>

For critical incidents involving DPD officers, the DPD's IAB submits the case to the DPD's Use of Force Review Board (UOFRB) to determine whether the officer's UOF violated or was consistent with the department's UOF policy. The voting membership of the UOFRB consists of the commander of the DPD's Major Crimes Unit, a designated rotating commander, two community members the department trains and certifies who are selected by the chief of police, and a representative from a non-DPD law enforcement agency.<sup>125</sup> The CRO's commanding officer and a member of the department with expertise in police tactics serve as nonvoting members.<sup>126</sup> The OIM is present at all UOFRB proceedings in an advisory capacity.<sup>127</sup>

If the UOFRB determines that the UOF complied with DPD policy, the case is submitted to the chief of police and the OIM for review. If the case involves a nonfatal shooting, it is closed if the chief and OIM agree that no policy violations took place. If the chief and OIM disagree, they issue separate recommendations for the EDOS's consideration. If the UOFRB finds that the officer's actions violated any DPD policy, the officer is presented with an opportunity to respond to the findings at a "Chief's Hearing." The chief and OIM issue separate disciplinary recommendations, which are then forwarded to the EDOS for consideration.<sup>128</sup> The EDOS issues the final adjudication and discipline on all DPD officer-involved shootings.

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124. *Annual Report 2017*, 77 (see note 89).

125. *Operations Manual*, 105.06(5)(b)(4) (see note 112). Note: currently a representative from the Aurora, Colorado Police Department sits on the board to satisfy this requirement.

126. The commander of the CRO is the nonvoting chair of the UOFRB. In the event of a tie, he or she casts the deciding vote.

127. *Annual Report 2017*, 77 (see note 89).

128. *Annual Report 2017*, 77 (see note 89).

For critical incidents involving DSD deputies, the DSD’s IAB conducts an administrative review after receiving investigative files from the DPD’s Major Crimes Unit. The OIM issues recommendations regarding the investigation, and once the investigation is completed, DSD’s IAB submits it to the DSD’s CRO for review and determinations regarding violations of department policy.<sup>129</sup> If the CRO determines that the deputy’s actions complied with DSD policy, the case is forwarded to the sheriff. If the sheriff agrees that no policy violations took place, the case may be closed. The OIM reviews the CRO’s findings and issues recommended findings and discipline to the sheriff and DOS.<sup>130</sup>

If the CRO finds that the deputy’s actions were out of policy, the case is referred to the sheriff for a “Contemplation of Discipline Hearing,” during which the subject is given the opportunity to present any mitigating evidence.<sup>131</sup> The OIM is present at each hearing and participates in deliberations with DSD command staff and thereafter submits disciplinary recommendations to the sheriff. Both the OIM’s and sheriff’s recommendations are submitted to the DOS, which issues the final determination regarding policy violations and discipline, if any.<sup>132</sup>

### **Disciplinary process monitoring**

In Denver’s oversight system, the DPD’s or the DSD’s IAB assumes the role of fact-finding and identifying any potential violations of policy (or “specifications”). When the OIM deems the completed IAB investigation to be sufficiently thorough, the case is submitted to the relevant department’s CRO for review and disciplinary findings.

The CRO of the relevant department may specify additional policy violations not included in the IAB report. It will then adjudicate each specification,<sup>133</sup> present its findings on each specification to the EDOS, and issue disciplinary recommendations on behalf of the department to the EDOS. For both DPD and DSD complaints, the OIM reviews the CRO’s findings and recommendations and issues a determination as to any violations of department policy. The OIM comments on the reasonableness of the CRO’s preliminary findings and recommendations and,

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129. *Annual Report 2017*, 89 (see note 89).

130. *Annual Report 2017*, 89 (see note 89).

131. *Annual Report 2017*, 89 (see note 89).

132. *Annual Report 2017*, 89 (see note 89).

133. CRO adjudication decisions include sustained, not sustained, unfounded, or exonerated.

if it disagrees with the CRO's assessment, provides its own recommendations. If this occurs, the OIM has the ability to attend various discipline-related meetings where it may receive additional information on the case. The OIM may revise its recommendations if it is impacted by the new information or insight on the case.

For formally investigated complaints involving sworn DPD officers, if either the CRO or OIM recommend discipline on a case, a Chief's Meeting<sup>134</sup> will take place.<sup>135</sup> At the Chief's Meeting, attendees discuss the case and provide input to the chief of police to assist in their disciplinary recommendation, if any, to the EDOS.<sup>136</sup>

If disciplinary action greater than a written reprimand is considered after the Chief's Meeting, the case will move to a pre-disciplinary hearing<sup>137</sup> during which the subject officer(s) can present their recollection of the incident and any mitigating evidence. Officers may be subject to additional questioning during pre-disciplinary meetings. At the conclusion of the pre-disciplinary meeting, the OIM and chief formulate separate final disciplinary recommendations for the EDOS's consideration. The EDOS has the final say over findings regarding each specification and any associated disciplinary action.

In the case of formally investigated DSD complaints, if the CRO recommends discipline greater than a written reprimand or if the OIM disagrees with the CRO's initial findings regarding each specification and disciplinary recommendations, the deputy is given the option to have a "Contemplation of Discipline" meeting.<sup>138</sup> Participants<sup>139</sup> discuss the case and provide input to assist in the sheriff in their disciplinary recommendation to the EDOS. Subject deputies may be

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134. Those present at a DPD Chief's Meeting are the chief of police, two deputy chiefs, the commander of the IAB, the commander of the CRO, the subject officer's commanding officer, an assistant city attorney, the deputy director of safety, and either the IM or a senior deputy monitor from the OIM.

135. *Annual Report 2017*, 18-19 (see note 89).

136. *Annual Report 2017*, 18-19 (see note 89).

137. Present at a DPD pre-disciplinary hearing are the commander of the CRO, an assistant city attorney, the deputy director of safety, independent monitor or senior deputy monitor, and the subject officer and his or her representative.

138. *Annual Report 2017*, 44 (see note 89).

139. Present at DSD pre-disciplinary meetings are the sheriff or his or her representative, a DSD deputy division chief, a DSD CRO analyst, a transcriptionist, a commander, an assistant city attorney, the deputy director of safety, the IM or senior deputy monitor from the OIM, and the subject deputy or his or her representative.

re-questioned and are presented the opportunity to provide mitigating evidence or reasons on why discipline should not be imposed. The OIM and sheriff then issue separate recommendations to the EDOS for consideration. The EDOS has the final say over findings and discipline.

## **Policy analysis and recommendations**

The OIM dedicates significant resources to data-driven analyses of the DPD's and the DSD's policies and procedures to issue recommendations to the EDOS, chief of police, sheriff, mayor, and city council. Recommendations take many forms—letters to stakeholders, special issue-specific reports, and highlights in annual and semiannual reports—depending what OIM staff consider the most effective approach to addressing policy and procedural deficiencies. The OIM often includes brief recommendations throughout the agency's annual and semiannual reports, contextualized with relevant data on complaints, trends, and discipline. When more significant issues need to be addressed, such as the currently ongoing DSD reform efforts,<sup>140</sup> the OIM may take a multipronged approach encompassing letters to the EDOS, police chief or sheriff, dedicated sections in its annual and semiannual reports, and special reports on specific issues. The OIM in many cases issues follow-up reports on the status of its recommendations and any associated ongoing issues with departmental practices. Although stakeholders in Denver's oversight system have no statutory requirement to respond to or implement the OIM's recommendations, the agency's strategic approach to disseminating and publishing them often leads to public discussions that have in the past had a notable impact on the DPD's and DSD's operations.

In its 2013 semiannual (mid-year) report,<sup>141</sup> for example, the OIM published its review of the DSD grievance process, prompted by the OIM's observation that the number of DSD complaints<sup>142</sup> had significantly decreased over time and a finding that several serious misconduct allegations did not trigger formal IAB investigations as per policy.<sup>143</sup> The OIM interviewed inmates

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140. For more information on DSD reform, see "Sheriff Department Reform," City and County of Denver, accessed August 4, 2020, <http://www.denvergov.org/content/denvergov/en/mayors-office/programs-initiatives/sheriff-department-reform.html>.

141. *Semiannual Report 2013* (Denver: Office of the Independent Monitor, 2013), [https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2013SemiannualReport\\_OIM.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2013SemiannualReport_OIM.pdf).

142. As mentioned earlier in this report, complaints alleging DSD deputy misconduct are a subset of the overall grievances inmates housed in a DSD detention center may file.

143. *Semiannual Report 2013*, 5 (see note 141); *Annual Report 2012*, 51–52 (see note 87).

and DSD personnel; examined electronic and written DSD records, policies, and internal documents;<sup>144</sup> consulted experts in corrections and civilian oversight; and reviewed several reports on national best practices to inform its review.<sup>145</sup> Policy analysts re-coded grievance spreadsheets to analyze patterns and trends and identify anomalies, revealing that a handful of DSD sworn personnel received a disproportionate amount of complaints.<sup>146</sup> At the conclusion of its review, the OIM identified several deficiencies with the DSD grievance process and issued 11 corresponding procedural and policy change recommendations. Among these recommendations were to develop explicit guidelines on grievance handling and complaint triage, create a centralized grievance database accessible to the OIM, develop data collection policies and procedures for routine analysis of data, and improve the overall accessibility of the grievance process.<sup>147</sup>

The OIM frequently follows up on the concerns it addresses in its reports. In 2014, it sent a letter to the City Council Safety and Wellbeing Committee detailing critical issues with DPD deputy supervision, UOF reporting, and IAB procedures,<sup>148</sup> and then initiated a follow-up review of the DSD complaint-handling process in late 2016.<sup>149</sup> In 2018, it released a special report on the in-custody death of an inmate at one of Denver's detention centers, detailing the incident; critiquing the administrative investigation and subsequent disciplinary proceedings; and issuing several recommendations concerning the DSD IAB's investigation, training on identifying individuals experiencing excited delirium, handling of urgent medical emergencies, and review of critical incidents.<sup>150</sup>

The OIM also engages in proactive forms of policy analysis, such as its assessment of the DPD's BWC pilot program and analysis of the DPD's revised UOF policy. In the case of the former, the OIM included a special chapter in its 2014 annual report documenting its analysis

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144. The OIM experienced difficulties obtaining crucial internal memos during this review, which in part prompted COB and city council efforts to revise the OIM's ordinance to provide sufficient access to information.

145. *Semiannual Report 2013*, 5-6 (see note 141).

146. *Semiannual Report 2013*, 25 (see note 141).

147. *Semiannual Report 2013*, 32-33 (see note 141).

148. Nicholas E. Mitchell, letter to Paul D. Lopez re: Critical Issues to be Addressed in the Reform of the Denver Sheriff Department, September 10, 2014, [https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2014DSDReformLetter\\_OIM.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2014DSDReformLetter_OIM.pdf).

149. *Annual Report 2016*, 41 (see note 109).

150. Nicholas E. Mitchell, *The Death of Michael Marshall: An Independent Review* (Denver: Office of the Independent Monitor, 2018), [https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2018MarshallReport\\_OIM.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2018MarshallReport_OIM.pdf).

of UOF under DPD's pilot BWC policy.<sup>151</sup> During the six-month pilot program, on-duty patrol officers below the rank of sergeant stationed in downtown Denver were equipped with BWCs.<sup>152</sup> The OIM's analysis sought to determine whether officers were adhering to the policy and if the policy had an impact on UOF. Policy unit staff coded information on the 80 UOF reported in the downtown district during the pilot period and supplemented the data with information in supervisor use of force cover sheets and department-wide UOF and complaints. Of the 80 UOF that took place during the period under examination, the OIM identified 45 incidents that should have been recorded per the criteria set by the pilot policy. In its review of supervisor cover sheets, the OIM discovered that of the 45 UOF that should have been captured on camera according to the BWC pilot program policy, usable footage was available for only 21.

The OIM analyzed the assembled data to identify patterns in officer, community member, or incident characteristics that could explain why incidents were not recorded. Its findings resulted in nine recommendations for improving the final BWC policy, including deploying BWCs to *all* uniformed officers, providing additional training on activation, revising the policy to keep BWCs activated until the conclusion of the encounter, and improving supervisor reporting on BWC use or non-use. Some of the OIM's recommendations were adopted in the final DPD BWC policy.<sup>153</sup>

In January 2017, the OIM sent a letter to the DPD's chief with its preliminary analysis of the department's draft UOF policy revisions.<sup>154</sup> While commending the department on several improvements contained in proposed revisions, the OIM also pointed out several deficiencies including vague language, a less precise UOF standard compared to national best practices, and insufficient opportunities for community feedback. The letter included several recommendations for improvement; comparisons with other departments' UOF policies; and references to model policies, national standards, and best practices.

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151. *Annual Report 2014* (Denver: Office of the Independent Monitor, 2015), [https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2014AnnualReport\\_OIM.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2014AnnualReport_OIM.pdf).

152. The pilot policy required officers to activate BWCs under a broad spectrum of circumstances, including all pedestrian stops, traffic stops, vehicle contacts, citations, arrests, and situations which escalated to an "adversarial" encounter.

153. Michael Roberts, "Inside Denver Cops' New Body Camera Policy: No Cams for Off-Duty Officers," *Westword*, September 9, 2015, <http://www.westword.com/news/inside-denver-cops-new-body-camera-policy-no-cams-for-off-duty-officers-7118109>.

154. Nicholas E. Mitchell, letter to Robert D. White, Chief of Police, re: Preliminary Analysis of the Denver Police Department's Draft Use of Force Policy, January 25, 2017, [https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2017DPDUOFPolicyLetter\\_OIM.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2017DPDUOFPolicyLetter_OIM.pdf).

## Community outreach

The OIM's community outreach unit expands the accessibility of the complaint process by engaging community members, groups, and uniformed DPD and DSD personnel via social media, email, and community events. The Community Outreach Ombudsman, along with an OIM deputy monitor, also manage the OIM/DPD Mediation Program to facilitate dialogue between civilians and law enforcement.

In 2017, the OIM held or attended 252 presentations—165 with neighborhood associations, advocacy groups, nonprofits, and community organizations and 87 with members of law enforcement. The OIM's outreach to uniformed personnel includes presenting at roll calls, ride-alongs, training events, and attending graduations.

One of the OIM's most notable outreach functions is its youth outreach project (YOP) called *Bridging the Gap: Kids and Cops*, which was developed in response to the OIM's observation that relatively minor youth-officer interactions escalated to arrests in part because of miscommunications between involved parties.<sup>155</sup> In 2014, the OIM received a Justice Assistant Grant from the Colorado Division of Criminal Justice to develop a curriculum that would foster improved communications and interactions between Denver's youth and DPD officers. The OIM convened a Youth Project Advisory Committee—consisting of local academics with expertise in criminal justice and the social sciences; DPD officers; and representatives from local youth-serving nonprofits, faith organizations, juvenile justice agencies, the Denver District Attorney's Office, and Denver Human Services—to collaborate and advise on developing the YOP curriculum.<sup>156</sup>

The five-hour YOP sessions take place in schools and community centers and consist of five modules. In opening sessions, youth and officers are brought together for an introduction to the program and to establish goals and ground rules for the day. Officers and youth are then split into separate trainings. Youth learn their constitutional rights, their responsibilities during encounters with law enforcement, proper police procedures, and what to do if those procedures are not followed.<sup>157</sup> Officers receive training on youth de-escalation techniques and many other

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155. Nicholas Mitchell, *Semiannual Report 2016* (Denver: Office of the Independent Monitor, 2016), 2, [https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2016SemiannualReport\\_OIM.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2016SemiannualReport_OIM.pdf).

156. 2016 *Semiannual Report*, 6 (see note 155).

157. 2016 *Semiannual Report*, 8 (see note 155).

topics including emotional intelligence, trauma-informed policing, positive youth development, and restorative practices. Both groups also participate in implicit bias exercises to learn how common potential biases may influence encounters between youth and officers. After their separate training, officers and youth reconvene in small groups for lunch and informal conversations. The groups then move into breakout sessions with trained community facilitators to share their stories and experiences with each other. In the final closing sessions, officers and youth are brought back together to reflect on what they have learned throughout the day, identify next steps for improving relations between youth and police, and complete an evaluation of their perspectives after concluding the forum.<sup>158</sup>

The officer training component takes place both before and during YOP forums.<sup>159</sup> It involves DPD instructors training their peers in the department on an adapted version of Connecticut's evidence-based "Effective Police Interactions with Youth" program,<sup>160</sup> which includes an overview of the concepts of disproportionate minority contact, adolescent brain development and decision-making, and implicit bias training.<sup>161</sup> This training, which also covers techniques for communicating with youth and de-escalation, is required of all officers who want to participate in a YOP forum.

To date, more than 260 officers have received training on youth development and de-escalation, and more than 900 students and 64 officers have participated in over 25 YOP forums.<sup>162</sup> The YOP has received strong support from the DPD, the city council, community groups, and local universities for its impact. The program has been undergoing an outcome evaluation conducted by the University of Colorado-Denver for the Colorado Office of Adult and Juvenile Justice.

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158. 2016 *Semiannual Report*, 9 (see note 155).

159. 2016 *Semiannual Report*, 10 (see note 155).

160. For more information on the original program, see Center for Applied Research in Human Development, *Effective Police Interactions with Youth: Training Evaluation* (Hartford: State of Connecticut Office of Policy and Management, 2008), [http://www.ct.gov/opm/lib/opm/cjppd/cjjyd/jjydpublishations/police\\_eval\\_full\\_report\\_final\\_september\\_2008.pdf](http://www.ct.gov/opm/lib/opm/cjppd/cjjyd/jjydpublishations/police_eval_full_report_final_september_2008.pdf).

161. Center for Applied Research in Human Development, *Effective Police Interactions* (see note 160).

162. 2017 *Annual Report*, 92 (see note 89).



The wave of high-profile incidents in 2020 between police and community members prompted widespread calls for greater community oversight of law enforcement agencies. *Civilian Oversight of Law Enforcement: Report on the State of the Field and Effective Oversight Practices*, a white paper by the National Association for Civilian Oversight of Law Enforcement, outlines the history of civilian oversight including reference to this case study of the Denver Police Department and eight others.



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