REPORT OF THE
VIRGINIA STATE CRIME COMMISSION

Studies of Business Premises Liability and Urban Violence

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 65

COMMONWEALTH OF VIRGINIA
RICHMOND
1993

COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building

FREDERICK L. RUSSELL
EXECUTIVE DIRECTOR

November 17, 1992

TO: The Honorable L. Douglas Wilder, Governor of Virginia, and Members of the General Assembly:

House Joint Resolution 72, adopted by the 1992 General Assembly, directed the Virginia State Crime Commission to conduct a study of business premises liability and urban violence. On November 17, 1992, the Virginia State Crime Commission adopted the report on business premises liability and urban violence and approved it for publication. The Commission requests that the Governor and General Assembly adopt the recommendations herein.

I have the honor of submitting the Virginia State Crime Commission report in response to House Joint Resolution 72.

Respectfully submitted,

Robert B. Ball, Sr.
Chairman

RBB:dgs

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Studies of Business Premises Liability and Urban Violence

TABLE OF CONTENTS

Studies of Business Premises Liability and Urban Violence

I. Authority for Study

During the 1992 General Assembly session, Delegate William Robinson of Norfolk successfully patroned House Joint Resolution 72, directing the Virginia State Crime Commission to study business premises liability and urban violence. HJR 72 specifically requested that the Commission "study the protection of the public while upon business premises which are open to the public and to study urban violence involving police agencies." (See Appendix A.)

Section 9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission "to study, report, and make recommendations on all areas of public safety and protection." Section 9-127 of the Code of Virginia provides that "the Commission shall have the duty and power to make such studies and gather information in order to accomplish its purpose, as set forth in Section 9-125, and to formulate its recommendations to the Governor and the General Assembly." Section 9-134 of the Code of Virginia authorizes the Commission to "conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The Virginia State Crime Commission, in fulfilling its legislative mandate, undertook the study of business premises liability and urban violence.

II. Members Appointed to Serve

At the April 21, 1992 meeting of the Crime Commission, Chairman Robert B. Ball, Sr., of Henrico selected Delegate James F. Almand to serve as Chairman of Subcommittee II studying business premises liability and urban violence. The following members of the Crime Commission were selected to serve on the subcommittee:

Delegate James F. Almand, Arlington, Chairman
Mr. Robert C. Bobb, Richmond
Delegate Jean W. Cunningham, Richmond
Senator Virgil H. Goode, Rocky Mount
Delegate Raymond R. Guest, Jr., Front Royal
Mr. H. Lane Kneedler, Attorney General's Office
Senator Edgar S. Robb, Charlottesville
Delegate Clifton A. Woodrum, Roanoke

III. Executive Summary

During the 1992 General Assembly session, the House and Senate Rules Committees approved the merger of HJR 72, patroned by Delegate William P. Robinson, Jr., of Norfolk, with HJR 220, patroned by Delegate Jerrauld C. Jones of Norfolk. The merger of the two study resolutions resulted in HJR 72, which addressed the issues of urban violence and business premises liability.

Commission staff met with Delegate Jones and Delegate Robinson during the course of the study to receive patron input, and met with legislative staff of the Norfolk and Richmond City Managers' Offices. Commission staff also participated in the joint Richmond/Norfolk legislative planning meeting held in Williamsburg, and attended "The Conference on Addressing Violent Crime Through Community Partnerships," sponsored by the City of Norfolk and the Federal Bureau of Investigation in May, 1992, in Norfolk. Commission staff, along with staff from the Governor's Office, Attorney General's Office and state agency crime prevention programs, represented Virginia at the Regional Drug Policy Conference in Newark, New Jersey, in July, 1992, sponsored by the President's Office on Drug Control Policy.

The Virginia Trial Lawyers Association was instrumental in assisting the Commission in its review of the issue of business premises liability. Commission intern Maryann C. Jayne reviewed and summarized three citizen review panel models, which are included in Appendix C of this report. Steve Squire, librarian for the Department of Criminal Justice Services, provided invaluable assistance in acquiring research materials on citizen review panels and community policing. The National Institute of Justice also provided research materials on community policing programs.

Subcommittee II held three meetings to address the issues in HJR 72, and approved the subcommittee's report on October 27, 1992. The full Commission reviewed and approved the subcommittee's report, including its findings and recommendations, at its November 17, 1992 meeting.

The findings and recommendations are as follows:

Finding 1: The concept of business premises liability has been developed in case law, and so far no state has enacted a law imposing a duty on a business owner to provide a safer environment to protect patrons from criminal injury. Undoubtedly, if a statute were passed that imposed this duty on businesses, business owners would have to assume the costs of implementing certain safety enhancements and carrying additional insurance coverage. However, patrons may be more likely to favor businesses that make an effort to provide a safer business environment.

Recommendation 1: At present, there is insufficient support for an amendment to the Code of Virginia to provide a statutory civil remedy for business patrons injured by a criminal act on a business premises. In the alternative, the Department of Criminal Justice Services Crime Prevention Center should develop recommendations to create incentives that encourage businesses to make voluntary safety improvements to their business properties for the benefit of their patrons and invitees.

Finding 2: The community policing, or problem-oriented policing, model provides an alternative approach for law enforcement agencies to develop better relationships with their communities, promote professional policing practices that help private citizens solve problems and encourage a greater commitment to crime prevention and greater public accountability of the police agency.

Recommendation 2: The Department of Criminal Justice Services should provide training for supervisors and line officers in how to plan and implement community policing in a law enforcement agency.

Finding 3: Citizen panels that review the practices and policies of law enforcement agencies, and review the decisions of police peer review panels, offer distinct advantages and disadvantages for communities. Evaluation research concerning the success or failure of citizen review panels cannot be generalized to other communities with unique characteristics, problems and needs.

Recommendation 3: Communities should consider the advantages and disadvantages of citizen review panels for police agencies before implementing such panels, and consider alternative means for fair and public review of police response practices and policies, such as peer review systems that are subject to public inspection.

IV. Study Goals and Objectives

Based upon the requirements of HJR 72, the following issues and objectives were presented to the Subcommittee for consideration:

- Determine whether present law in Virginia should be changed to allow crime victims injured on business premises to pursue a civil remedy against negligent business property owners/operators;

- Develop findings and recommendations concerning community policing;

- Develop findings and recommendations concerning citizen review panels.

The Commission pursued the following activities in furtherance of the above-mentioned objectives:

- Received testimony from business property crime victims and trial attorneys about business premises liability issues;

- Reviewed the available research on community policing and citizen review panels;

- Developed administrative and legislative recommendations on the issues of business premises liability, community policing and citizen review panels.

V. Background

A. Business Premises Liability

The general rule in all states is that no one has an affirmative duty to protect another person from the criminal actions of a third party. Traditionally, the protection of individuals from harm by third parties is a governmental function carried out by the police.

The law of most states, including Virginia, also recognizes a general principle that a landowner owes an invitee to his premises a duty of ordinary care to maintain his premises in a reasonably safe condition or at least not to lead his invitee into a dangerous situation. The question has been raised as to whether this general principle applies to situations in which an invitee has been assaulted by a third party on the landowner's premises.

Most states have found that an owner or possessor of land has a duty to protect invitees from assaults by third parties while on the premises. However, the facts which trigger this duty vary considerably among the states which have addressed it. In very broad terms, the existence of the duty depends on the relationship of the parties and whether the criminal activity reasonably could have been anticipated.

Many states have recognized that such a duty exists where there is a special relationship between the parties. Examples of such relationships are those between a common carrier and a passenger, an innkeeper and a guest, a tavern owner and a patron and, less frequently, between a landlord and a tenant. The duty arises in those situations because the invitee or customer effectively has entrusted his safety to the business owner.

The more complex question is whether, absent such a special relationship, the landowner owes a duty to protect an invitee from harm by third persons. The response to this inquiry ranges from a finding that an invitor owes an invitee a

general duty of care where the incidence of harm is reasonably foreseeable (the vast majority of states that have ruled on the issue); to one recognizing such a duty only in cases of immediate or imminent harm (Virginia and Tennessee); to a statement that no such duty exists (Minnesota and Hawaii). The remainder of this summary will be devoted to setting out this range of responses in more detail.

The current law in Virginia is a clear example of a very narrow delineation of the duty. In Wright v. Webb, 234 Va. 527 (1987), the Supreme Court stated,

> "We hold that a business invitor, whose method of business does not attract or provide a climate for assaultive crimes, does not have a duty to take measures to protect an invitee against criminal assault unless he knows that criminal assaults against persons are occurring, or are about to occur, on the premises which indicate an imminent probability of harm to an invitee." 234 Va. at 533.

Tennessee appears to be the only other state which requires a finding of imminent harm before a duty arises. If one were to place this ruling on a scale based on the foreseeability of the criminal activity, it is fair to state that the landowner must be aware of the criminal act either at the time of the assault or immediately preceding it in order for him to have an affirmative duty to act to protect his invitee.

This statement of the duty owed by a landowner contrasts sharply with the rule in most other states. Eighteen other states (California, Colorado, Delaware, Iowa, Kansas, Maine, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota and Texas) all expressly have adopted the rule of law stated in §344 of the Restatement of Torts (2nd). This rule has been adopted in case law, but not by statute.

The courts of these states often have focused on Comment f to this rule as the basis for a finding of a duty on a landowner. That comment states:

> Duty to police premises. Since the possessor is not an insurer of the visitor's safety, he is ordinarily under no duty to exercise any care until he knows or has reason to know that the acts of the third person are occurring, or are about to occur. He may, however, know or have reason to know, from past experience, that there is a likelihood of conduct on the part of third persons in general which is likely to endanger the safety of the visitor, even though he has no reason to expect it on the part of any particular individual. If the place or character of his business, or his past experience, is such that he should reasonably anticipate careless or criminal conduct on the part of third persons, either generally, or at some particular time, he may be under a duty to take precautions against it, and to provide a reasonably

sufficient number of servants to afford a reasonable protection.

It is interesting to note that Justice Poff wrote a concurring opinion in the Wright v. Webb case cited above in which he urged the Court to adopt the rule set forth in Comment f. It also is important to note that ten other states (Connecticut, Florida, Georgia, Idaho, Illinois, Michigan, Mississippi, Missouri, Wisconsin and Utah) have adopted variations of this rule, but have not expressly approved or adopted §344 of the Restatement.

The Restatement rule states the duty owed by a landowner in rather broad terms. The analysis by most courts then turns on the question of whether the landowner knew or had reason to foresee that an invitee would be subject to harm from third persons while on his property. In other words, the duty to warn or protect would not arise in a particular case unless there was a reasonable basis to anticipate such harm.

Several states clearly state that the duty does not arise unless the landowner knew or should have known of incidents which are of a very similar nature to the incident which is then before the court. Other states have looked more to the general criminal history of a particular property to determine whether the harm to the person was reasonably foreseeable. Many states require that some form of criminal activity be proven, even if they are only crimes against property, before a duty will be found to exist to protect against personal injury.

The broadest reading in regard to whether criminal conduct was reasonably foreseeable rejects the requirement that any prior criminal activity must be shown. In Patterson v. Deeb, 472 So. 2d 1210 (1985), the Florida court stated, "...we are not willing to give the landlord one free ride, as it were, and sacrifice the first victim's right to safety upon the altar of foreseeability by slavishly adhering to the now-discredited notion that at least one criminal assault must have occurred on the premises before the landlord can be held liable."

Based on this logic, several states such as California, Alaska, Texas and Idaho have adopted a much broader test of when the duty arises. In Isaacs v. Huntington Memorial Hospital, 695 P2d 653 (1985), the court stated that several factors must be weighed as follows:

> "...the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for the breach, and the availability, cost, and prevalence of

insurance for the risk involved."

In this opinion, the court departed from the Restatement rule by finding that mere foreseeability of the harm was an insufficient test.

Finally, it should be noted that many defendants in the cases reviewed argued that, even if they owed a duty to the injured person to take steps to protect them, the criminal conduct of the third party was an "intervening cause" which relieved them of liability. The response to this argument involves a determination of whether the alleged intervening cause was foreseeable. If the criminal act was reasonably foreseeable, it does not relieve the landowner of liability for the breach of duty to his invitee.

By way of brief summary, the law of premises liability has evolved over the last decade with a clear trend toward placing some burden on landowners to protect invitees from criminal conduct when permissibly on their premises. The responsibility of the landowners and the degree of care owed by them is relative to their past experience with criminal activity on their premises and the seriousness of that activity. The courts generally have left to the factfinder the weighing of the reasonableness of the landowners' conduct versus the probability of harm to their guests based on the criteria outlined above.

There is a variety of opposition to enacting a change in the law to create a liability for business property owners when patrons are injured by a criminal act. In states where business property owners have been found liable for neglecting to protect patrons from known criminal activity, case law has developed in the courts to recognize this duty for business owners. Opponents point out that, at this time, no state has imposed such a duty on business owners by statute. Additionally, there is concern that the cost of doing business could be increased significantly if business owners were required to provide safeguards adequate to protect against unknown criminal activities. To enact a law creating this duty for business owners arguably puts them in the position of trying to protect the customer from a third party, i.e., the criminal perpetrator, over whom the business owner has no control. Finally, opponents stress that the insurance coverage necessary to protect patrons against an uncontrollable harm would be very costly to underwrite.

In October, 1992, a Virginia business premises liability suit was settled out of court in favor of the plaintiff for $780,000. The plaintiff had been injured in a shooting incident in a Hardee's restaurant parking lot in Suffolk. In this case, the plaintiff was able to rely on the two-pronged test in Wright v. Webb because it was apparent that the plaintiff was in danger of imminent harm (the clerk saw that one of the persons instigating a fight with the plaintiff was wearing a gun, but failed to notify the manager), and the 24-hour restaurant operation had a history of criminal activity on the premises.

B. Community Policing

Law enforcement agencies, to be responsive and accountable, often must change directions and rethink basic strategies to reflect changing community attitudes and concerns. Across the nation, police agencies have operated since the 1930's in what commonly is termed the traditional policing style. Research by the National Institute of Justice describes the identifying characteristics of traditional policing as follows:

- The police are reactive to incident reporting, i.e., the organization is driven by calls for police service.

- Information from and about the community is limited.

- Planning is narrowly focused and centers on internal police operations.

- Officer recruitment focuses on the spirit of adventure rather than the spirit of service.

- Patrol officers are restrained, expected to follow rigid policies and procedures and are not encouraged to be creative problem-solvers.

- Training is geared primarily toward law enforcement, on which officers spend only 15 to 20 percent of their time, rather than on problem-solving and crime prevention.

- Management is authoritarian and militaristic.

- Supervision is control-oriented.

- Rewards are associated with participation in daring events rather than provision of service to the community.

- Performance outcomes are based on activities, such as the number of arrests, rather than overall outcome, such as decrease in the crime rate.

- Agency effectiveness is based primarily on Uniform Crime Reports data.

- Police departments operate as independent, not collaborative, agencies.

By the 1960's, when social unrest hit a new high, it became clear to criminal justice theorists and researchers that traditional policing styles were insufficient to address the race riots and anti-war protests of the time. In response, the Federal Law

Enforcement Assistance Administration provided increased funds for police operations and research. Two significant findings became apparent:

1. Increasing the number of police officers does not necessarily reduce the incidence of crime or increase the proportion of crimes that are solved.
2. Random patrols, introduced for perceived efficiency, produce inconsistent law enforcement results, and do not necessarily reduce citizens' fear of crime or engender support for the police.

In 1987, the Newport News Police Department began an experiment that implemented an older style of law enforcement: community policing. The Newport News Police Department project, termed "problem-oriented policing," incorporated three main themes:

1. increased effectiveness through solving problems that give rise to crime;
2. reliance on the expertise and creativity of line officers to be problem-solvers; and
3. closer involvement with the public to ensure that the police are meeting the needs of the citizens.

Early results from the Newport News project were promising: a 39 percent reduction in downtown robberies, a 35 percent reduction in burglaries in one apartment complex and a 53 percent drop in the number of thefts from parked vehicles at a local manufacturing plant. Although other police agencies had attempted problem-solving programs, no other police agency in Virginia had taken the community policing approach on an agency-wide basis. Key elements to the success of the Newport News project included:

1. participation in the program by officers of all ranks;
2. the encouraged use of a broad range of information in addressing crime;
3. the encouraged implementation of a broad range of solutions not limited to the criminal justice process; and
4. development of a program that could be replicated in any large police agency.

Researchers in the community policing field recommend that community policing be implemented in two phases. Phase I is the development of a program plan for community policing that is comprehensive and agency-wide. Isolated community policing programs within a traditionally-managed police agency soon fade within the departments because they conflict with the traditional policing style. Phase II requires that the agency revamp its overall style to reflect a community policing approach that affects the entire department and the community.

A successful community policing style includes the following key elements:

- an orientation toward problem-solving that focuses on results as well as process;
- articulated policing values that incorporate citizen involvement in matters that directly affect the safety and quality of neighborhood life;
- officer accountability is addressed through regular interacting with residents, and informing residents of police efforts to fight and prevent neighborhood crime;
- decentralized authority and structure within the police agency;
- power-sharing between the police and the community through the establishment of a partnership that encourages active citizen involvement in policing efforts;
- redesigned beats to coincide with neighborhood boundaries rather than arbitrarily-drawn police precincts;
- officers permanently assigned to beats;
- beat officers encouraged to use creative approaches to solving neighborhood problems;
- most investigations are decentralized to take a problem-solving approach;
- police officers are allowed to manage their own beats, utilizing police management to support beat efforts;
- training is provided in problem-solving approaches and leadership skills;
- performance evaluations are based on the officer's ability to solve problems and stimulate community participation in crime prevention and intervention; and
- calls for police service are managed in a manner that best facilitates a problem-solving approach to law enforcement.

Several locales in Virginia, such as Richmond City, Roanoke County and Henrico County, have begun implementing community policing-styled programs. National research and evaluation of community policing programs have revealed the following successes:

- a greater commitment to crime prevention;
- more public scrutiny of police operations;
- greater public accountability of the police agency;
- police services customized to the needs of the community;
- better community organization;
- greater citizen support for police efforts;
- shared responsibility for crime-solving between the police agency and the community;
- greater officer job satisfaction;

- better internal relationships in the agency; and
- more flexibility and support for organizational change.

Implementing community policing on an agency-wide basis calls for sophisticated planning and step-by-step implementation. Training in the community policing style should be made available for police department managers and supervisors as well as for beat officers. Communities and their law enforcement agencies must determine whether present approaches to law enforcement are effective, and whether a change to a community policing style would be advantageous and appropriate. Community and internal agency support is critical to the success of a community policing approach, and proper planning and training should precede any re-direction into community policing.

C. Citizen Review Panels

The violent riots in Los Angeles following the 1992 verdict in the Rodney King beating case sparked national and local interest in the issue of police accountability. Police brutality and harassment charges have skyrocketed in some locales in recent years. The Virginia chapter of NAACP (National Association for the Advancement of Colored People), in the June 4, 1992, edition of the Richmond Free Press, published the results of a survey it conducted of more than 30 Virginia local police agencies. According to the survey, one locality in Virginia (unidentified) had 457 complaints of police misconduct over a five year period from 1985 to 1990.

Most often police agencies rely on Internal Affairs Divisions to investigate citizen complaints against police officers. Police agencies contend that peer review is the most effective and efficient way to assess the appropriateness of police responses to citizen complaints and emergency situations. However, in some cities, more often in large urban centers, citizens have expressed a distrust and dissatisfaction with police peer review policies and practices. Civilian review panels have been adopted by city councils, or by some other process, in a number of American cities, including Dayton, Ohio, San Diego and Berkeley, California, Hartford, Connecticut and New York City.

The Hartford Institute of Criminal and Social Justice conducted a comprehensive review and critique of 16 U.S. cities that had experience with citizen review panels or ombudsman programs. The Hartford study divided the 16 cities according to the following types of programs:

- Civilian-dominated and mixed (police and civilian) review boards which sit external to the Police Department;

- Police Commissioners or Boards of Police Commissioners comprised of civilians which sit over the Police Department; and

- Committees and offices which include civilians within the Police Department in either an advisory or an investigative capacity.

The Hartford study detailed the experiences of cities with either citizen review panels or police ombudsman programs and considered the following factors:

1. Purpose of the board;
2. How the board was established;
3. Powers of the board;
4. Relationship of the board to the Police Department;
5. Composition of the board;
6. Resources available to the board;
7. Rules and procedures of the board;
8. Availability of records of the board; and
9. Notification of involved parties by the board.

Although the Hartford study did not attempt to evaluate the success or failure of police review mechanisms, it did offer comments in support of and against citizen review panels.

Comments supporting citizens review panels:

* Civilian review boards are a "means (for the police) to gain more effective relationships with the public."
* Civilians are "traditionally less strict in viewing misconduct."
* If an officer is exonerated by a civilian review board, then it is less likely to be seen as "whitewash."
* Police have considerable discretion in carrying out their duties, and "the decisions, priorities and policies that result do not suffer the scrutiny of review by community citizens."
* Civilian review boards are a "safety valve," placing "salutary restraint upon the police and citizens to approach the problem of wrongful conduct of police with greater respect for the facts."
* Minorities do not trust internal review procedures and thus do not always bring their complaints to the police.

Comments opposing citizen review panels:

* Civilian review boards are "redundant in functions" to police review.
* Fear of legal consequences from civilian review boards will inhibit officers from using force when it is warranted.
* Internal review by the police places the "responsibility for dealing with misconduct in those persons best able to cure it."

* Civilians lack the knowledge and experience to evaluate police practices.

* Civilian review boards are seen as "places for emotional catharsis for the many frustrations of minority inner-city citizens rather than organs for dispassionate inquiry."

* Such boards symbolize the adversarial relationship between the police and community, rather than foster cooperative relations.

* It is "unreasonable to single out the police as the only agency which should be subject to special scrutiny from the outside."

* Punishment meted out by an insider is more acceptable to police officers.

Police chiefs voice the strongest opposition to civilian review panels, citing the loss of a disciplinary power that begins the erosion of their overall authority and leadership powers. Chiefs and officers often prefer an ombudsman process over a citizen review panel, particularly if the ombudsman has the same power of complaint review against other municipal employees, such as teachers and bus drivers.

The real issue underlying the topic of citizen review panels is police accountability, and whether the police are properly answerable to the citizens. Some researchers, such as James J. Fyfe, contend that if police accountability, and not police control, is the objective of a citizen review panel, then "the integrity and objectivity of the process of reviewing complaints are far more important than whether the process is staffed by civilians or sworn officers, especially when the chief reserves the final determination regarding disciplinary action." Some cities have opted, instead of instituting citizen review panels, to open up the police peer review process to public access through the following mechanisms:

1. Documentation of incidents - complaint cases are thoroughly investigated and well-documented to best reconstruct the series of events leading to the complaint.

2. Identifying patterns of misconduct - although misconduct reviews focus on independent complaints, any review mechanism should take into consideration whether an officer is the subject of repeated complaints; "officers with lengthy complaint histories should be looked at very closely and should be considered candidates for counseling or for reassignment to duties that do not bring them into close contact with citizens."

3. Feedback on policies and practices - sometimes the reason behind a complaint against a police officer is the officer's adherence to a poorly conceived agency policy or practice; complaint mechanisms should be established that consider complaints about counterproductive police policies and develop recommendations for redefining such policies to better reflect community standards and expectations.

4. Credibility - citizens should be assured by police complaint review

measures that their complaints will be heard and taken seriously. Internal review procedures that involve a large number of persons in the review process will have more credibility with citizens.

Researchers such as Fyfe believe that the objectives of a police review procedure can be attained by internal review procedures directed by the police chief. Although there always will be criticism of internal review procedures, these criticisms can be minimized if the review process is open and documented. "Replacing a chief is a lot less polarizing and expensive than establishing a board that is unlikely to live up to the unrealistic expectations of its proponents."

In 1981, the Police Executive Research Forum, a private criminal justice research organization, developed a model policy for police agency handling of citizen complaints. The model offers a statement of purpose based on an objective of prevention of police misconduct, and recommends criteria for the following activities to foster more professionalism and accountability in police agencies:

1. officer recruitment and selection;
2. training;
3. written directives manuals;
4. supervisory responsibilities;
5. community outreach; and
6. data collection and analysis.

The Executive Forum model defines specific categories of police misconduct that should be subject to disciplinary actions, including excessive force, improper entry, harassment, search procedures, demeanor, serious and minor rule infractions and arrest tactics. The model also recommends that police agencies develop a scale of progressive penalties for punishing guilty officers, ranging from counseling or verbal reprimand to demotion or full discharge from employment. A comprehensive internal review process such as that recommended by the Police Executive Research Forum conceivably would be acceptable to and supported by the community and the police agency.

Although the majority of research supports internal police peer review rather than citizen review panels for efficient and professional resolution of police misconduct complaints, there obviously is not one best approach to dealing with police misconduct and accountability. Community attitude and support for the police, history of misconduct claims against officers in the department, failed investigations and the professionalism of agency management practices all must be taken into consideration before a community decides whether to institute an external police review process.

Little comprehensive research is available on the long-term effectiveness of

citizen review panels. The unique aspects of communities make it difficult to assess the success or failure of one community's approach and then generalize the results to other communities. Appendix C of this report includes descriptions of three communities' citizen review panels: Dallas, Texas, Dayton, Ohio, and San Diego, California. Each of these cities took a slightly different approach to implementation of a citizen review panel. Localities in Virginia that wish to consider whether to initiate a citizen review process should examine a variety of models used by other communities, and identify those goals and objectives they wish to achieve through a citizen panel. In the alternative, communities with concerns about accountability of their police agencies may consider opening to the public and improving documentation of internal police peer review procedures to keep citizens better informed about police misconduct resolutions.

VI. Findings and Recommendations

Finding 1: The concept of business premises liability has been developed in case law, and so far no state has enacted a law imposing a duty on a business owner to provide a safer environment to protect patrons from criminal injury. Undoubtedly, if a statute were passed that imposed this duty on businesses, business owners would have to assume the costs of implementing certain safety enhancements and carrying additional insurance coverage. However, patrons may be more likely to favor businesses that make an effort to provide a safer business environment.

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VII. Resources

Urban Violence:

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Appendix A

HOUSE JOINT RESOLUTION NO. 72

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Rules)

(Patron Prior to Substitute—Delegate Robinson)

House Amendments in [ ] - February 11, 1992

Requesting the Virginia State Crime Commission to study the protection of the public while upon business premises which are open to the public and to study urban violence involving police agencies.

WHEREAS, an increasing number of people are being subjected to violent criminal acts while upon premises being used for business purposes, including parking lots; and

WHEREAS, owners and operators of such business premises are in a better position than their guests and customers to know of such dangers and hazards on or near their property; and

WHEREAS, under current law in Virginia, there is no clear affirmative duty on business property owners or operators either to warn customers or guests of such risk of harm, to take safety precautions or to provide proper security to protect customers and guests once they are upon the owner's property; and

WHEREAS, in the absence of adequate warnings and safety precautions by property owners and operators, local law-enforcement officials are increasingly called upon to provide special patrols for such privately owned business premises, thus adding burdens to police departments already operating with limited resources; and

WHEREAS, concomitant with the increase in urban gangs, "gang warfare" and drug trafficking, urban violence has escalated; and

WHEREAS, in response to the escalation in the amount and severity of urban violence, police agencies have engaged in numerous responsive tactics; and

[~~WHEREAS, too often the police response has, itself, been overreactive and occasionally violent; and~~]

WHEREAS, [~~both~~ the increase in urban violence and the responsive tactics had caused concern among the citizenry ~~incidents of police overreaction erode the faith of the citizenry in law enforcement~~ ; now, therefore, be it]

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission be requested to study (i) to the extent possible, the prevalence of criminal activity against business patrons on business premises open to the public, (ii) the duties of business property owners and operators to warn and take appropriate precautions to protect their business patrons under current law, (iii) the burden on law-enforcement agencies to patrol such privately owned premises in the absence of security measures taken by the owner of the premises; (iv) urban violence and the remedies and responses of police agencies and (v) the advisability of forming citizen review boards which would review and potentially offer advice on the subject.

The Commission shall recommend appropriate means, including changes in civil law and the adoption of safety standards, to more effectively encourage or require business property owners and operators to exercise appropriate care for the safety of their customers and guests, and consider such related matters as the Commission may deem appropriate. In addition, the Commission shall also seek to determine, among other things, the root causes of the current tide of urban violence, specifically those incidents which result in inappropriate reaction by police agencies, and to determine if citizen review committees are advisable, what their composition should be and the nature of their role in review and advice on the subject of urban violence involving police agencies.

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1993 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Appendix B

PREMISES LIABILITY
SUMMARY OF CASE LAW

1. Alabama -- Moye v. A.G. Gaston Motels, Inc., 499 So. 2d 1368 (1986).

A young woman was shot outside of a teen dance and died. There was no evidence of prior similar incidents at these premises. The Court rejected the Restatement rule but stated that a duty may be imposed on a store owner to take reasonable precautions to protect invitees from criminal attack in the exceptional case where the store owner possessed actual or constructive knowledge that criminal activity was a probability. Proximate cause is proven by foreseeability of conduct and foreseeability is proven by a review of prior criminal incidents at the premises which the owner was aware of or should have been aware of.

2. Alaska -- Division of Corrections v. Neakok, 721 P.2d 1121 (1986).

The relatives of a victim murdered by a parolee sued the state for negligent supervision. The court found that the parole situation created a special relationship giving rise to a duty to protect third persons. The case is cited because it adopts the test adopted in California for foreseeability. Alaska does not appear to have case law directly on point.

3. Arizona -- Robertson v. Sixpence Inns of America, Inc., 789 P.2d 1040 (1990).

This case involved the shooting of a security guard at a hotel. The manager found out about a robbery but failed to notify either the security guard or the police in a timely manner. The robber shot the guard while leaving the premises. There was a failure to warn of imminent harm.

The case adopts §343 of the Restatement regarding a duty to warn of hazards the owner could reasonably foresee. There is a discussion of proximate cause stating that the defendant's act or omission need not be a "large" cause to be the proximate cause of the injury. A distinction is made between intervening causes and superseding causes.

4. Arkansas -- Industrial Park Businessmen's Club, Inc. v. Buck, 479 S.W.2d 842 (1972).

This case involved injury to a patron of a bar resulting from the negligence of the owner in dealing with an intoxicated patron. The court found that a tavern keeper is under a duty to use reasonable care and vigilance to protect patrons from reasonably foreseeable injury at the hands of other patrons.

5. California -- Isaacs v. Huntington Memorial Hospital, 695 P.2d 653 (1985).

A physician was shot in the parking lot of a hospital. The hospital was located in a high crime area where numerous assaults and robberies had occurred prior to this crime. The hospital

supplied three unarmed guards for the whole hospital area both internal and external. Court adopted §344 of the Restatement and went further in determining when a landowner has a duty to protect invitees from criminal assault (See attached summary of law).

6. Colorado -- Taco Bell, Inc. v. Lannon, 744 P.2d 43 (1987)

The patron of a fast food restaurant was injured during an armed robbery. The evidence showed that there were 10 armed robberies at the same place but not security precautions had been taken. This court adopted §344 of the Restatement and in addition considered other factors in establishing a duty -- the risk involved, the foreseeability and likelihood of injury as weighed against the social utility of the defendant's conduct, the magnitude of the burden of guarding against injury or harm, and the consequences of placing the burden on the defendant.

7. Connecticut -- Antrum v. Church's Fried Chicken, Inc., 499 A. 2d 807 (1985).

A customer was injured by an unknown assailant while she waited in her car at a drive in window of a fast food establishment. There was a prior history of criminal incidents at this establishment. The court found that a business proprietor owes a duty to an invitee to keep the premises reasonably safe for the reasonably anticipated uses of the property. It further found that the owner's negligence in not providing security in light of the past history was a substantial factor in producing the injury and the acts of third parties did not relieve the owner of liability. It also stated that whether a particular injury is foreseeable depends on whether prior crimes had occurred at or near the premises so to have put the proprietor on notice that precautions were necessary.

8. District of Columbia -- Kline v. 1500 Massachusetts Avenue Apartment Corporation, 430 F.2d 477 (1970)

This is a case in which the special relationship between a landlord and a tenant gave rise to a duty of care on the part of the owner against criminal activity of others.

9. Delaware -- Jardel Co., Inc. v. Hughes, 523 A.2d 518 (1987)

An employee of a shopping mall tenant brought an action against the owner of the mall for injuries incurred when she was abducted and raped while going to her car in the mall parking lot. The mall had provided limited number of security guards. The court adopted §344 of the Restatement and further stated that once an individual undertakes to perform an act it must be done with due care. This referred to the fact that the mall provided security which was inadequate in light of the many prior crimes occurring on the premises.

10. Florida -- Meyers v. Ramada Hotel Operating Company, Inc., 833 F.2d 1521 (11th Cir., 1987).

Business invitee was sexually assaulted at a hotel in which prior criminal activity was proven. The court ruled that the hotel had a duty to its invitee to guard against dangers of which it should have been aware and this included reasonably foreseeable criminal acts. The court then looked to prior criminal history to determine whether this act was foreseeable.

11. Georgia -- Burdine v. Linquist, 340 S.E.2d 198 (1986)

Two couples were robbed while they were taking their luggage to their hotel room. The court that a duty arose from a Georgia statute which places liability on an owner of land who fails to exercise ordinary care in keeping the premises safe for invitees. This statute was said to be applicable to situations in which the harm is caused by independent criminal acts where there was a reasonable apprehension of danger of which the owner was aware.

12. Hawaii -- Cuba v. Fernandez, 801 P.2d 1208 (1990)

A spectator at a cockfight, who was not an invitee of the owner of the property, was assaulted by a third party and was denied any recovery. The court ruled that absent a special relationship such as a common carrier to passenger or an innkeeper to guest there is no duty to protect a person against criminal activity of third persons.

13. Idaho -- Sharp v. W.H. Moore, Inc., 796 P.2d 506 (1990)

A woman was raped while working in her office and sued the landowner for failure to provide adequate security. The court found that every person has a duty of care to prevent unreasonable, foreseeable risk of harm to others. In determining whether a duty of care is owed, court stated that if the degree of result or harm is great and preventing it is not difficult a relatively low degree of foreseeability is required; however, if threatened injury is minor and the burden of preventing it is high then a higher degree of foreseeability is required. This case was also based on fact that owner had a locked door policy to prevent such problems but that he violated his own policy. Liability arose because he did failed to perform a duty he undertook.

14. Illinois -- Marshall v. David's Food Store, 515 N.E.2d 134 (1987)

A patron of a grocery store was abducted and sexually assaulted in the parking lot. She sued the owner of the lot and the security company that had undertaken to patrol the area. The court recognized that an invitor who has actual or constructive notice of a potentially dangerous situation has a duty to take reasonable precautions to protect its invitees. Here there was evidence that the grocery store had such notice but the evidence is unspecified.

15. Indiana -- Ember v. B.F.D., Inc., 490 N.E.2d 764 (1986)

A patron of a bar was assaulted in a parking lot across the street from the bar which was often used by the bar's patrons. The court stated that the relationship between a landowner and an invitee created a duty of reasonable care. This principle is extended in regard to a bar to provide adequate staff to police the premises. The court also found that the duty extended to property beyond the owner's premises if it was reasonable for invitees to believe the invitor controlled the premises or the invitor knew his invitees customarily used the premises.

16. Iowa -- Galloway v. Bankers Trust Company 420 N.W.2d 437 (1988)

A patron of a shopping mall was the victim of a homosexual rape in a restroom of the mall. The court adopted §344 of the Restatement as a statement of the duty owed by a landowner. The evidence showed that there had been numerous criminal acts at the mall but no crimes against the person. The court held that the repetition of criminal activity, regardless of the mix of types, was sufficient to put the landowner on notice of the foreseeability of such an incident.

17. Kansas -- Gould v. Taco Bell, 722 P.2d 511 (1986)

A patron in a restaurant was injured by the assault of another patron while the shift manager looked on. The restaurant was said to owe its patron an affirmative duty to warn or to exercise reasonable care to forestall or prevent the harm. In so ruling, the court restated Kansas' adoption of §344 of the Restatement. The duty does not arise until the danger is apparent to the landowner.

18. Kentucky -- no cases found

19. Louisiana -- Kraaz v. La Quinta Motor Inns, Inc. 410 So.2d 1048 (1982)

The clerk of the motel gave a pass key to all of the rooms to two of the guests. They used it to rob two other guests. The hotel was held liable when the court found that an innkeeper owes his guest the same duty of care of a common carrier to a passenger.

20. Maine -- Baker v. Mid Maine Medical Center, 499 A2d 464 (1985)

The facts of this case involved an injury to a spectator at a golf tournament and the facts are, therefore, not on point with this discussion. The case is cited, however, because in it the court adopted §344 of the Restatement in finding that landowners owe a duty of care to business invitees.

21. Maryland -- Tucker v. KFC National Management Company, 689 F. Supp. 560 (D. Md. 1988).

A customer in a fast food restaurant was stabbed by another customer while they were waiting in line. The relationship of landowner to business invitee was not found to require the same duty as that of a common carrier to a passenger but that there is only a duty of reasonable care owed. The court found the lack of an armed guard at the restaurant was not the proximate cause of the injury.

22. Massachusetts -- Parslow v. Pilgrim Parking, Inc., 362 N.E.2d 933 (1977)

A woman was raped after parking her car in the defendant's garage. The court cited §344 of the Restatement in finding that an invitee has a duty to take reasonable steps to protect its patrons from injury caused by the foreseeable acts of third parties.

23. Michigan -- Askew v. Parry, 345 N.W. 2d 686 (1984)

A customer in a bar was killed by a robber. The court recognized that the relationship between a landowner an invitee is sufficiently special to impose an affirmative duty to protect invitees from foreseeable assaults by users of the premises. Criminal activity along with whether the premises are located in a high crime area are factors in determining whether the act was foreseeable.

24. Minnesota -- Erickson v. Curtis Investment Company, 447 N.W.2d 165 (1989)

A parking ramp customer was raped by a third party. The court found that the mere merchant-customer relationship does not impose a duty on landowner to protect his customers from criminal activity; however, it did find that the particular circumstances surrounding a parking deck's use and the risk created therein does give rise to a duty to take reasonable precautions to deter criminal activity this is balanced by considerations of the financial and practical feasibility of the means of meeting the risk of harm.

25. Mississippi -- Kelly v. Retzer & Retzer, Inc. 417 So. 2d 556 (1982)

A customer of a fast food restaurant was killed in the parking lot. The court found no liability on the owner because the evidence proved he had regularly patrolled the parking lot and had called the police at the first sign of trouble. There was also evidence that the decedent had not sought to avoid the trouble. The court did, however, rule that the restaurant did owe its patrons a duty of reasonable care for their safety. Here the landowner met his duty.

26. Missouri -- Faheen v. City Parking Corporation, 734 S.W.2d 270 (1987)

A tenant was killed in the parking garage by a car bomb. Court ruled for the landowner. It stated that the landlord tenant relationship was not a special relationship giving rise to a duty to protect from deliberate criminal attacks. It did, however, recognize a violent crimes exception to the general rule which states that the owner does have to take measures to protect an invitee where there is a history of prior specific incidents of violent crime that are sufficient and numerous to put the landowner on notice of the likelihood of danger to an invitee. Here there was no prior history of homicides or car bombings to put owner on such notice.

27. Montana -- no cases found

28. Nebraska -- K.S.R.v. Novak & Sons, Inc., 406 N.W.2d 636 (1987)

A tenant was sexually assaulted in her apartment. Evidence showed that the landlord knew about a third party who was seen several times masturbating in the laundry room. The landlord took no action and had failed to repair the lock on the tenant's apartment. It was held that a landlord has a duty to protect a tenant from foreseeable criminal acts of a third party and that foreseeability is based on prior similar criminal activity.

29. Nevada -- Early v. N.L.V. Casino Corporation, 678 P.2d 683 (1984)

A casino patron was robbed and beaten in a casino restroom. The court adopted §344 of the Restatement as the duty owed by a owner to an invitee. The court recognized prior criminal activity as a legitimate means to determine foreseeability.

30. New Jersey -- Butler v. Acme Markets, Inc., 445 A2d 1141 (1982)

A customer was injured during a robbery in the parking lot of a grocery store. There was a repeated history of criminal activity at the store. Plaintiff received a very small award which was upheld by the court. The court adopted §344 of the Restatement as the duty owed.

31. New Mexico -- Valdez v. Warner, 742 P.2d 517 (1987)

The owner of an automobile was assaulted by an employee of the bar in the bar's parking lot after he accidentally damaged the employee's car. Bar owner was said to have a duty to protect an invitee based on §344 of the Restatement.

32. New York -- Nallan v. Helmsley-Spear, Inc., 407 N.E. 2d 451 (1980)

An invitee was shot while signing into a building. There had been prior criminal incidents at the building and the attendant was absent at the time of the shooting. The court adopted §344 of the Restatement as the rule of law imposing a duty on the owner. Proximate cause is proven by a showing that the defendant's behavior was a causative factor in the sequence of events leading to the injury. Subsequent New York cases raise issues of foreseeability ruling that a stabbing by a panhandler and an attack in a bathroom where there was no prior history of criminal incidents is not foreseeable and no duty arose.

33. North Carolina -- Murrow v. Daniels, 364 S.E.2d 392 (1988)

A motel guest was robbed and raped in her room when two assailants knocked on her door and she opened it. Contributory negligence was an issue. The motel was located in a high crime area. This case recognized that North Carolina had previously adopted §344 of the Restatement. The court also ruled that criminal activity near the premises may be relevant in determining foreseeability.

34. North Dakota -- no cases found

35. Ohio -- Daily v. K-Mart Corporation, 458 N.E.2d 471 (1981)

A business invitee was attacked in the parking lot of a retail store by third persons. The court expressly adopted §344 of the Restatement. It further stated that foreseeability is determined by reference to prior criminal acts and that the intervening act, not a superseding act, does not relieve one of liability if such an act was foreseeable.

36. Oklahoma -- no cases found

37. Oregon -- Uhlein v. Albertson's , Inc., 580 P.2d 1014 (1978)

A patron of a grocery store was assaulted and robbed while in the grocery store. She alleged negligence in not having unusual lighting, alarms or security guards. A defense verdict was upheld. Oregon had previously adopted §344 of the Restatement as stating the duty to an invitee. In this case, the court found that the prior incidents of crimes involved mainly shoplifting and even though the store was located in a high crime area the evidence was not sufficient to prove that this incident was reasonably foreseeable to require the store owner to take any of the proposed security precautions.

38. Pennsylvania -- Kenny v. Southeastern Pennsylvania Transportation Authority, 581 F. 2d 351 (Third Circuit, 1978)

A woman was raped while awaiting a train at the public transit authority station. The evidence showed that crime was on the rise

in the vicinity and that the area where the rape occurred was not well lit. While this case involved a common carrier, the court recognized that Pennsylvania follows §344 of the Restatement. It also stated that the focus is not limited to anticipation of criminal conduct by the person who actually caused the harm but rather whether the defendant could reasonably have expected criminal activity from anyone at the station.

39. Rhode Island -- no cases found

40. South Carolina -- Daniel v. Days Inn of America, Inc., 356 S.E.2d 129 (1987)

The evidence showed that a woman was raped in a hotel. During the rape which lasted over a 5 to 6 hour period, screams could be heard outside of the hotel room. The night auditor of the hotel was supposed to patrol the area regularly every two hours but he heard nothing. The court cited §344 of the Restatement and emphasized the duty of the landowner to discover criminal acts which are occurring on the premises.

41. South Dakota -- Small v. The Mckennan Hospital, 437 N.W.2d 194 (1989)

A woman was raped and murdered after being abducted from a hospital parking lot. South Dakota does recognize §344 of the Restatement as the statement of the duty owed by a landowner; however, it went further and adopted the broader duty stated in California on the grounds that it did not want the first victim of a crime to go unprotected. It, therefore, has a broader definition of foreseeability (See attached summary)

42. Tennessee -- Cornpost v. Sloan, 528 S.W.2d 188 (1975)

A female shopper was assaulted in a shopping center parking lot. The court limited the duty of a landowner to an invitee to protection from imminent probability of harm. The duty here is very similar to the present law in Virginia. A subsequent federal case applying Tennessee law found a higher duty to a motel guest based on a theory that a special relationship existed between an innkeeper and a guest.

43. Texas -- Garner v. McGinty, 771 S.W.2d 242 (1989)

A patron of a hair salon was injured during an armed robbery. This case adopted §344 of the Restatement as well as the California rule of reviewing the totality of circumstances in determining foreseeability.

44. Utah -- Massie v. Godfather's Pizza, 844 F.2d 1414 (Tenth Circuit, 1988)

A waitress was raped during a robbery when the store manager refused, contrary to store policy, to open the safe. The court stated that a landowner is liable for harm caused by third persons

if he failed to exercise reasonable care to discover that such acts were being or were likely to be done. The rule applies if the conduct was foreseeable. The existence of a store policy on conduct during a robbery proved that such an incident was foreseeable and no further proof was required of the victim.

45. Vermont -- no cases found

46. Virginia -- Wright v. Webb See attached summary, duty only arises where probability of harm is imminent.

47. Washington -- no cases found

48. West Virginia -- Massey v. Jim Crockett Promotions, Inc., 400 S.E.2d 876 (1990)

A spectator at a professional wrestling match was assaulted by a wrestler. The court recognized a general duty of an owner to exercise reasonable care to keep and maintain premises in a reasonably safe condition. Foreseeability is the test of proximate cause.

49. Wisconsin -- Peters v. Holiday Inns, Inc., 278 N.W.2d 208 (1979)

A hotel guest was injured during a robbery. This case turned on the special relationship between an innkeeper and his guest and requires a hotel to exercise ordinary care to provide adequate protection from assaultive and other types of criminal activity. Particular circumstances may require specific security measures.

50. Wyoming -- no cases found.

Appendix C

DALLAS CITIZENS/POLICE REVIEW BOARD

WHAT:
1) 15 members
2) 3 technical advisory committee members
3) Established in 1988 by City of Dallas Ordinance §37-31 through §37-38
4) Review the facts and evidence pertaining to an incident or complaint against a city police officer
5) May refer complaints to IAD of the police department and may recommend to the city manager improvements in police department policies and procedures

WHO:
1) Members appointed by city council - 13 members nominated by each council member respectively, and 2 nominated by the city council as a whole. The Chairman is nominated by the Mayor and approved by City Council.
2) 3 members to the technical advisory committee are appointed by City Manager. Each must have *at least* one year of law enforcement experience. Each must be from a surrounding locality, and *not* from the city of Dallas. These technical members have no voting rights.
3) Membership shall be representative of the ethnic diversity of the city.
4) No persons who are employees or business associates of an adversary party, nor persons who have a pecuniary interest in any pending litigation or claim against the city relating to the board or the police department, shall be able to serve on the board.

WHERE: 1500 Marilla St., Room 4DN, Dallas, Texas 75201

TERM OF SERVICE:
1) Two year terms
2) Appointments made in August of each odd-numbered year
3) Terms begin in September
4) Technical advisory committee members serve 3 year terms

TRAINING: Each board member must attend a training session to become familiar with police procedures.

REMOVAL FROM MEMBERSHIP:
Any board member who discloses confidential information to anyone other than another board member or city staff member

assigned to the board or as compelled testimony in a court proceeding shall forfeit membership on the board.

QUORUM: Requires seven members

STAFF: An administrative assistant from the city manager's staff will be designated to receive citizen complaints for referral to the police department and to aid the board and the technical advisory committee in their work.

MEETINGS:

1) "The board shall meet at least once each month in city hall and at other times at the call of the chairman."
2) "The board in reviewing a personnel matter shall hold closed meetings in compliance with the Texas Open Meetings Act, acting in a nonjudicial capacity."

POLICIES AND PROCEDURES:

1) The chief of police provides the board with a list of all citizen complaints filed with IAD.
2) Complaints received by the board directly from citizens will be sent to IAD for investigation.
3) The board will review cases *only after*:
   a. the completion of all findings and recommendations of IAD
   b. the final decision within the police department determining what, if any, disciplinary action will be taken
   c. (if grand jury proceedings are anticipated) after the conclusion of all grand jury proceedings related to a city police officer's conduct in the incident or complaint.
4) The board may:
   a. subpoena witnesses
   b. request the city manager to review disciplinary action by the chief of police in a case
   c. recommend to the city manager improvements in police department policies and procedures
5) No subpoena may be issued without a favorable vote of at least seven members of the board. If it is approved by at least seven members, and at least two technical advisory committee members concur in writing in the need for a subpoena, the board will be authorized to issue the subpoena. If at least two members of the technical advisory committee do *not* concur in writing in the need for a subpoena, the board will be authorized to issue the subpoena only upon

approval by a favorable vote of at least six members of the city council. In no event shall the board have the authority to subpoena a city police officer to appear or testify before the board or to provide information to any investigator of the board if that officer's actions are the subject of the incident or complaint giving rise to the board's investigation

6) The board only may review an incident or complaint:
   a. if the incident or complaint involves a fatality or serious bodily injury to a citizen; or
   b. if a citizen who submitted a written complaint to the police department or to the board then submits to the board a written request for review of IAD's findings, and at least seven members of the board decide that IAD's findings merit board review
7) An appeal can be made through a form sent to complainants with the letter notifying him/her of IAD's investigation findings. The form has three choices for a complainant to choose from:
   a. that he/she is satisfied with IAD' findings
   b. that he/she is dissatisfied with IAD's findings
   c. that he/she is dissatisfied with IAD's findings and wishes to appear before the Review Board
8) The technical advisory committee shall use its expertise and experience in law enforcement matters and procedures to assist the board in the review and investigation process. The technical advisory committee is advisory only, with no oversight authority.

NOTES:

1) When the board is not satisfied with IAD's investigation and the incident or complaint properly has come before the board, the board has the authority to conduct an additional investigation into the incident or complaint. If the board is dissatisfied with IAD's investigation and does decide to conduct an additional investigation of an incident or complaint involving a fatality or serious bodily injury, the board may contract at its discretion and, on a case-by-case basis, with an independent investigator to assist and advise the board in its review.
2) The board acts as an <u>advisory</u> board to the chief of police, the city manager and the city council.
3) No funding for the board, the technical advisory committee or persons appearing before the board shall be included in the police department's budget. The funding will be provided by the city from separate sources.

Since passage of the ordinance in 1988, redistricting of Dallas has created two additional districts. This explains why the ordinance states that there are 13 members of the Board and why today there are actually 15 members.

The Board does rely quite substantially on the technical advisory committee. It typically will turn to the technical members for comment at each meeting. First a representative from IAD will brief the Board at a meeting, and it is common for the Board to then turn to the technical members to ask them if this is "how it works" in their law enforcement agency.

Currently, the technical advisory committee consists of one individual from a drug investigations unit, and two Chiefs of Police from localities in the surrounding Dallas area.

DAYTON CITIZENS APPEAL BOARD

WHAT:

1) 5 members
2) Established by City Manager as authorized by City Commission Ordinance (1990)
3) Hear appeals of police department's investigation findings regarding alleged police misconduct
4) a. Hear monthly reports from IAD regarding current investigations
   b. Review professional standards of the police department
   c. Review police policies and procedures as necessary
   d. Review recommendations made by the Firearms Committee

WHO:

1) Members appointed by City Manager
2) a. No criminal convictions
   b. No candidates for public office
   c. Receive no compensation
3) a. One member - legal
   b. One member - former law enforcement
   c. Three members - selected from community
   d. Assistant City Manager and Chief of Police serve as ex-officio, non-voting members
4) Racially and geographically representative of the city
5) Balanced male and female representation

WHERE:

1) 320 W. Monument Avenue, Dayton, Ohio 45402
2) Separate from police department (reports to City Manager)

TERM OF SERVICE:

Two-year terms
No more than three consecutive terms

TRAINING:

All members must complete the Citizens Appeal Board training program designed by the Department of Central Services prior to serving on the Board.

REMOVAL FROM MEMBERSHIP:

City Manager may remove member for:

1) Incompetence
2) Neglect of duty
3) Misconduct or malfeasance
4) A member also may be removed for missing two consecutive Board

meetings without appropriate excuses delivered to the Chairperson.

QUORUM:

Requires three members
An affirmative vote of three members is required for Board action

STAFF:

1) One full-time staff member to take care of day-to-day operations
2) A legal advisor for each appeal (a pool of legal advisors is retained on contract with the Board)

MEETINGS:

1) Meet once a month for hearings and/or to conduct business
2) May meet outside of regularly scheduled meetings if Board feels it is necessary
3) All meetings are open to public, except when Board discusses personnel matters or on-going investigations

POLICIES AND PROCEDURES OF APPEALS:

1) Appeals are heard from citizens who are dissatisfied with the police department's investigation findings.
2) Appeals are NOT heard from police officers (they have other avenues for recourse.)
3) Appeal forms are sent with the letter informing complainants of the original investigation's findings, and forms are available in several city office locations.
4) After reviewing an appeal, a hearing may be scheduled and the complainant notified.
5) All appeals must be made within 30 days of the police department's having informed the complainant of its findings (exceptions to the 30 day rule due to hardship are permitted at the discretion of the Board.) An appeal must be put in writing and signed by complainant before the hearing occurs.
6) "The Board will, with the assistance of the Legal Advisor assigned to the appeal, review the Police Department's investigation of the citizen's complaint and the information provided in the Citizen's Appeal Form. The Board will also hear testimony from the appellant. If the Board determines that additional investigation is needed, it may request these efforts from the Police Department's Internal Affairs Bureau. The City Commission has given the Board authority to subpoena witnesses to incidents being appealed. The Board then, using the preponderance of evidence standard, will discuss and determine whether it sustains the Police Department's investigation findings. This decision is forwarded to the City Manager in report form, which is a matter of public record." ("Dayton Citizens Appeal Board" pamphlet)
7) The findings must be reported to the appellant, the City Manager, and the public within 30 calendar days of the Board's decision.

8) "The results of all of the Board's findings will be reprinted in the City's quarterly community newsletter. The Board will also produce an annual report, which will be reviewed by various government and judicial officials." ("Dayton Citizens Appeal Board" pamphlet)

NOTES:

1) The board only reviews and comments on IAD's findings.
2) Its recommendations are non-binding, as they have no disciplinary powers.
3) The City Manager may meet with the Chief of Police to discuss the Board's findings and seek additional remedies to the situation.

SAN DIEGO CITIZENS' REVIEW BOARD

WHAT:

1) 20 members
2) 10 prospective Board members
3) Established by the voters in 1988
4) Review and evaluate serious complaints brought by the public against the City of San Diego Police Department
5) Review ALL police shootings that result in the death or injury of a person (whether or not a complaint was filed)
6) May refer complaints to the Grand Jury, District Attorney, or any other governmental agency authorized by law to investigate the activities of a law enforcement agency

WHO:

1) Members appointed by City Manager
2) Efforts are made to assure representative participation
3) Personal interviews are conducted to assess applicant's experience, impartiality, prior time commitments, and aptitude for the extensive training program

WHERE:

City Administration Building
Office of the City Manager
202 C Street, M.S. 9A
San Diego, CA 92101

TERM OF SERVICE:

One year terms (effective July 1 of each year)
Members reappointed at discretion of City Manager

TRAINING:

Training is mandatory for all Board members and for prospective members before reviewing any cases. Such training will include, but shall not be limited to, familiarization with:

1) Police investigative techniques used by the Homicide and Internal Affairs Units
2) Review of investigative reports on police complaints
3) Police department operations
4) Police review structures and issues
5) Surveys of citizen concerns
6) Discipline policies of police
7) City Charter restrictions

8) Police training programs
9) State law
10) Race, community relations and law enforcement

REMOVAL FROM MEMBERSHIP:

If a member misses two consecutive meetings or four meetings in one year without an excuse satisfactory to the City Manager

QUORUM:

1) Requires 11 members.
2) When there are 15 members or less in attendance (but at least a quorum), 9 votes are required for official action.
3) When 16 or more members are in attendance, action may be taken by a simple majority.
4) Although prospective Board members must attend all open meetings, they have *no* vote.

STAFF:

1) One Executive Director will be appointed by the City Manager.
2) The Executive Director shall:
   a. Report directly to the City Manager
   b. Supervise personnel necessary to discharge the functions of the Review Board
   c. Coordinate formal communication between the police department, the Review Board and the City Manager's office

MEETINGS:

1) Regular monthly meetings held
2) "The Board will meet in closed session when discussing complaints, personnel or any other information specifically exempt from public disclosure by law." ("Citizens' Review Board on Police Practices, Policies and Procedures")
3) "Board members and alternates shall be given at least 72 hours notice prior to any special meeting. Special meetings must be approved by the City Manager." ("Policies and Procedures")
4) "POA will be provided with notice and agenda for each regular and special meeting."

DEFINITION:

"A 'Category One Complaint' means a serious complaint lodged against a Police Officer. It includes criminal conduct, use of racial or ethnic slurs, serious discourtesy, discrimination, false arrest and use of excessive or unnecessary force."

POLICIES AND PROCEDURES:

1) "Copies of all Category One complaints filed with the Police Department shall be forwarded immediately to the Executive Director."

2) The Executive Director, with the Board Chairperson, assigns the complaint to a Board review team. The team will review the complaint and will be provided with status reports on the progress of the investigation.

3) The findings of police shooting incidents involving death or injury but where no complaint is filed, will be reviewed by the Board after the police department and district attorney have completed their investigation(s).

4) Each Category One complaint will be screened by the Executive Director and the Internal Affairs Commander to determine whether:

a. The complaint falls within the jurisdiction of the Board;

b. The subject matter of the complaint is under investigation by the City/County department or agency having jurisdiction, or the State Attorney General, or is the subject of civil or criminal judicial proceedings.

5) "Within ten days after the receipt of a complaint from Internal Affairs, it shall be assigned by the Executive Director, after consultation with the Chairperson, to a team of three primary Board members who shall conduct a preliminary review of the complaint."

6) "Assignments ... shall be rotated to teams of Board members. At the monthly meetings of the Board, teams of three Review Board members may be formed to review cases utilizing a random selection process as needed, when a full rotation of Board Review teams is complete. Six (6) teams of three (3) members and one (1) team of two (2) members will be formed. The teams will be assigned complaints or cases for preliminary review and final review and comment."

7) Following the team's preliminary review, the members' observations will be given to the Executive Director.

8) A notice then is sent to the complainant notifying him/her that the complaint has been submitted for full Board review.

9) Upon completing its investigation, IAD will send its findings to the Executive Director. The Board review team originally assigned to the case will review IAD's findings.

10) The Board review team's review of IAD's findings will be classified as follows:

a. SUSTAINED. The department member committed all or part of the alleged acts of misconduct.

b. NOT SUSTAINED. The investigation produced insufficient information to prove clearly or to disprove the allegations.

c. EXONERATED. The alleged act occurred but was justified, legal and proper.

d. UNFOUNDED. The alleged acts did not occur.

e. MISCONDUCT NOTED. The department member has violated a section of the Department Policies and Procedures not alleged in the complaint.

f. RECLASSIFICATION TO INQUIRY. Contact cannot be made with complainant for a proper investigation to take place, or complainant withdraws

complaint.

11) After completing the review, the Board review team, by signature on the complaint form, shall:

a. Agree with the findings / no comment.
b. Agree with the findings / with comment.
c. Disagree with the findings / no comment.
d. Disagree with the findings / with comment.
e. Agree with Reclassification to Inquiry.
f. Disagree with Reclassification to Inquiry.
g. Request additional information.

12) Two members of the review team must agree on the conclusion, or it goes to the attention of the Executive Director and is placed on the next agenda of the full Board. If the review team decides on options a-f, the matter will be reported to the full Board at the next regularly scheduled meeting. If the team decides on option g, or if the full Board so requests, the Executive Director will return the investigation to the Chief of Police and the Internal Affairs Commander to provide additional information.

[In summary: The Board (through the Executive Director) receives word on what new cases or complaints IAD is investigating, and sets up a 2 to 3 member team to follow it. When IAD is done, it sends its findings to the Board. The team handling that case reviews the IAD's findings, and makes a decision on it from options a through g, or if they cannot make a decision (most likely the rare case), it sends the cases to the full Board to review.]

13) If the team elects to take option g, the Executive Director and the Board Chairperson may request that the "Manager Review and Evaluation Process" be initiated, and/or shall place the matter on the agenda of the next regularly scheduled or special meeting of the Board for ratification, discussion or further action.

14) The "Manager Review and Evaluation" is initiated by a majority vote of the Review Board or by the City Manager independently initiating his own review. The City Manager then must monitor, review and evaluate that case. The City Manager will monitor the progress of particularly sensitive complaints and incidents.

15) The Review Board will review and evaluate any disciplinary action taken or not taken by the San Diego Police Department against an officer as a result of a sustained Category One complaint. The results of this review will be given to the City Manager and the Chief of Police.

16) "The Board shall make semi-annual reports to the City Manager which shall be made public. A public forum shall be held at least semi-annually to advise the community of the process available for review of complaints and to hear public testimony on the police review process. All files of the Review Board shall be retained in accordance with applicable law."

NOTES:

1) The Board reviews IAD's investigation findings and/or may institute its own discussion on a matter. "The Board may consider discussion of a substantive item, other than one arising in the course of reviewing a particular case, if it determines that (1) the substantive matter impacts the work of the Board; and (2) because of its training and experience, the Board has expertise on the matter at hand. By an affirmative vote under these rules and regulations, the Board may proceed to discuss the matter and by a vote of the body, elect to make or not make recommendations to the City Manager."
2) The Board's decision is advisory in nature.