106TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 106–190

NATIONAL POLICE TRAINING COMMISSION ACT OF 1999

JUNE 18, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1659]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1659) to reinforce police training and reestablish police and community relations, and to create a commission to study and report on the policies and practices that govern the training, recruitment, and oversight of police officers, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Police Training Commission Act of 1999".

SEC. 2. ESTABLISHMENT.

There is established, subject to the availability of appropriations, a commission to be known as the "National Police Training Commission" (hereinafter in this Act referred to as the "Commission").

SEC. 3. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 5 members appointed as follows:

(1) The majority and minority leaders of the Senate shall each appoint 1 member.

(2) The Speaker of the House of Representatives and the minority leader of the House shall each appoint 1 member.

(3) The 4 members appointed under paragraphs (1) and (2) shall then select 1 member.

(b) ELIGIBILITY AND QUALIFICATIONS.—

(1) ELIGIBILITY.—The members of the Commission shall be individuals who have knowledge or expertise, whether by experience or training, in matters to be studied by the Commission under this Act. The members may be from the public or private sector, and may include Federal, State, or local officers or employees (other than those holding elective office), members of academia, nonprofit organizations, or other interested individuals.

(2) QUALIFICATIONS.—The members of the Commission shall be individuals who possess relevant backgrounds, credentials, and experience in some or all of the following:

(A) Civil and criminal litigation.

(B) Administrative and management functions of law enforcement in major cities and smaller communities.

(C) Community relations.

(c) TERM.—Each member shall be appointed for the life of the Commission.

(d) LENGTH OF COMMISSION.—The Commission shall cease to exist 1 year after the initial appointment of the 4 members described in paragraphs (1) and (2) of subsection (a). The initial appointment of the 4 members so described shall not take effect until the later of October 1, 1999 or the date on which appropriations are made available for the expenses of the Commission.

(e) VACANCIES.—Except as otherwise provided in this subsection, a vacancy in the Commission shall be filled in the manner in which the original appointment was made, and shall not affect the power of the remaining members to execute the duties of the Commission. If any of the original appointments are not made by the day that is 30 days after the date of the enactment of this Act, any members already appointed shall fill any vacancy existing on that date.

(f) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(g) CHAIRPERSON.—The Chairperson of the Commission shall be elected by the members.

SEC. 4. FUNCTIONS.

(a) STUDY.—The Commission shall conduct a study of the effectiveness of training, recruiting, hiring, oversight, and funding policies and practices in law enforcement, including the following:

(1) Training: policies, practices, and organizational strategies of law enforcement, and training and instruction in the use of force, the use of non lethal force, tactical and defensive tactical; arrests, searches and handcuffing; verbal communication; vehicle use; initial and continuing cultural diversity training;

community relations and sensitivity training of law enforcement vis a vis the community and the community vis a vis law enforcement.

(2) Recruitment and Hiring: policies and practices in hiring and recruiting law enforcement officers and identifying and setting standards for hiring regarding educational and psychological backgrounds; diversity; lengths of probationary periods.

(3) Oversight: complaint procedures regarding police officers, including screening, organization, and training of investigatory staff; the availability and fairness of due process requirements for members of the public and law enforcement officers, and obstacles to ensuring objective and timely investigations; discrimination and harassment, including the relationship between police and prosecutors; perjury, including the "code of silence".

(4) Funding: the effectiveness of the use of funding for programs relating to matters described in paragraphs (1) through (3) of this subsection, whether derived from the Violent Crime Control and Law Enforcement Act of 1994 or otherwise, by cities listed in section 210501 of such Act.".

(b) REPORT.—Not later than 1 year after the initial appointment of the 4 members described in paragraphs (1) and (2) of section 3(a), the Commission shall submit a report to Congress of the results of its study, including any recommendations the Commission may make with regard to the matters studied including best practices.

SEC. 5. ADMINISTRATIVE PROVISIONS.

(a) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out its duties under section 4. Upon the request of the Commission, the head of such department or agency may furnish such information to the Commission.

(b) SERVICE NOT COMPENSATED.—Each member of the Commission shall serve without compensation, and members who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(c) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of service for the Commission.

(d) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment and termination of an executive director shall be subject to confirmation by a majority of the members of the Commission.

(2) COMPENSATION.—The executive director shall be compensated at a rate not to exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code. The Chairman may fix the compensation of other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for such personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(3) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee, with the approval of the head of the appropriate Federal agency, may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(f) MEETINGS.—The Commission shall meet at the call of the Chairman.

(g) QUORUM; VOTING; RULES.—Two members of the Commission shall constitute a quorum to conduct business. Each member of the Commission shall have one vote, and the vote of each member shall be accorded the same weight. The Commission may establish by vote of a majority of its members any other rules for the conduct of the Commission's business, if such rules are not inconsistent with this Act or other applicable law.

(h) USE OF INFORMATION ACQUIRED BY THE COMMISSION.—Information acquired by the Commission for its study shall be used only for research, statistical, and reporting purposes.

(i) INFORMATION TO BE KEPT CONFIDENTIAL.—Information the Commission determines is confidential, including the identity of law enforcement officers and members of the public, shall not be disclosed to the public, nor made a part of any public findings, nor made a part of any report published by the Commission.

(j) APPLICABILITY OF FEDERAL TORT CLAIMS PROVISIONS.—For purposes of sections 1346(b) and 2401(b) and chapter 171 of title 28, United States Code, the Commission is a Federal agency and each of the members and personnel of the Commission is an employee of the Government. This subsection shall not be construed to imply that any commission is not a Federal agency or that any of the members or personnel of a commission is not an employee of the Government for purposes of sections 1346(b) and 2401(b) and chapter 171 of title 28, United States Code.

(k) HEARINGS.—

(1) IN GENERAL.—The Commission may hold such hearings, sit and act at such times and places, administer such oaths, take such testimony, and receive such evidence as the Commission considers advisable to carry out its duties under section 4.

(2) WITNESS EXPENSES.—Witnesses requested to appear before the Commission shall be paid the same fees as are paid to witnesses under section 1821 of title 28, United States Code. The per diem and mileage allowances for witnesses shall be paid from funds appropriated to the Commission.

SEC. 6. TRAINING.

Section 210501 of the Violent Crime Control and Law Enforcement Act of 1994 is amended—

(1) in subsection (b)(1)(A), by inserting ", and provide, under paragraph (4), training, recruitment, hiring, and oversight assistance" before the semicolon; and

(2) in subsection (b), by adding at the end the following:

"(4) The training, recruitment, hiring, and oversight assistance under paragraph (1)(A) shall be given to the following cities: New York, New York, Chicago, Illinois, Los Angeles, California, the District of Columbia, and Charlotte, North Carolina, and to one police department from each of the 4 geographical regions of the country (northeast, south, midwest, and west) 2 of which have less than 100 police officers and 2 of which have less than 300 police officers, as determined by the National Police Training Commission. The assistance may include funding for equipment, not to exceed 10 percent of the amount of the grant made to each city. The money appropriated for such assistance shall be distributed to those locations in proportion to the size of their police departments and upon receipt of written assurances from the police department that the department will provide access to its operations to the Commission. There are authorized to be appropriated for fiscal year 2000 for the purposes of such assistance the sum of $3,000,000.".

SEC. 7. DATA ON DEATHS WHILE IN CUSTODY.

Section 20101(b) of the Violent Crime Control and Law Enforcement Act of 1994 is amended—

(1) by redesignating paragraphs (6) through (9) as paragraphs (7) through (10), respectively; and

(2) by inserting after paragraph (5) the following:

"(6) assurances that the State will follow the guidelines established by the Attorney General in reporting, on a quarterly basis, information regarding deaths of any person who is in the process of arrest, has been incarcerated or is en route to be incarcerated at any municipal or county jail, State prison, or other local or State correctional facility (including any juvenile facility) that, at a minimum, includes—

"(A) the name, gender, ethnicity, and age of the deceased;

"(B) the date, time, and location of death; and

"(C) a brief description of the circumstances surrounding the death.".

PURPOSE AND SUMMARY

H.R. 1659 authorizes a grant of monies to local police departments to enhance training programs and creates a Commission to study, training, recruiting, hiring and oversight policies and practices, particularly relating to use of force issues. The award of

grant monies is conditioned on the identified police departments providing written assurances of their cooperation with the Commission.

BACKGROUND AND NEED FOR THE LEGISLATION

I. Use of Force By Law Enforcement and Police/Community Relations

Significant controversy has surrounded the use of force by law enforcement at the local, state and national levels. "Use of force" issues can arise during a variety of police/community contacts: use of weapons (guns, night sticks and other objects); use of physical force to restrain; use of non-lethal force (i.e. pepper spray and like technologies); verbal communication; tactical and defensive tactical strategies; arrests, searches and handcuffing; and vehicle use.

All of these tactics are integral and necessary to an effective policing strategy and to ensuring the protection of the police and the community. In implementing these strategies ineffectively or inappropriately, both police and members of the public have needlessly lost their lives. Further, members of various police departments across the country have been indicted and convicted on manslaughter and murder charges after using their weapons. In some cases, it appears that the police officers' ongoing training with their weapons is inadequate. In some major police departments, weapons training is less over a full career than one year of weapons training received by agents with the Federal Bureau of Investigation.

Police/community relations are central to the public safety, impacting on the cooperation of the community members with the police and in turn the success rate the police may have in curbing and preventing crime. These relations include having police officers of varying races and ethnic diversity who are knowledgeable about and sensitized to members of diverse communities.

Without effective police/community relations, the policing function and the safety of our communities are at risk. One retired police officer, who himself had experienced verbal assault charges while on the job, has started a program called "Verbal Judo" in which he instructs police officers in effective verbal communication and, particularly, in confrontational situations. Also, African American police officers in New York have taken it upon themselves to go out into the community to acquaint community members and youth with the requirements of policing and effective means of interacting with the police so as to avoid unnecessary confrontations.

In addition, the U.S. Civil Rights Commission has recommended that police officers undergo mediation training to more effectively resolve conflicts they encounter. Accordingly, police/community relations can have a direct impact on use of force issues.

Whether a "stranger" policing strategy, "community policing" or some other policing strategy is adopted, the level of skill and training possessed by individual police officers impacts on their decision-making about whether to use force and, if so, what type of force and how much to employ. Consequently, training in the use of force and in skills which facilitate police/community relations impact directly on the quality and effectiveness of the protection afforded to

the community by the police, as well as the ability of the police to prevent and reduce crime.

Because public safety and security depend upon the effective, efficient, impartial and nondiscriminatory delivery of policing services to all communities, it is the intention of the Committee that the Commission remain bipartisan and non-political in its study and recommendations. Further, certain police groups have expressed concern about the politicization of the composition of the Commission and their view that this could detrimentally affect the work of the Commission.

The method for selection of the Commissioners is designed to reflect that intention. A provision excluding those holding elective office is included and is designed to foster the Committee's intention that the Commission remain as non-political in its work as is possible, while at the same time providing the Commission access to the information and areas of expertise deemed necessary to accomplish its tasks under H.R. 1659. The decision not to compensate the Commission members is designed to attract Commissioners who will serve due to the prestige, not for compensation, and in this way further the Committee's intention that the Commission remain as bipartisan and as non-political as possible in its work.

During the week of May 3, 1999, A & E, a cable television station, has featured a series by Bill Kurtis on the use of force by law enforcement entitled "Bad Cops." One of the repeated themes of the program was whether law enforcement policies regarding the use of force required revamping and/or reconsideration. In February, of this year, New York, immigrant Amadou Diallo was the target of 41 bullets shot by four (4) police officers in the Bronx in New York City. This incident refocused the nation's attention on the use of force by law enforcement. While some members of the New York community claim that it was a racial incident—four white police officers fired at an immigrant—others have concluded that race is not at the heart of the incident but, rather, the training of the particular police officers. The particulars of the incident raised a number of questions in the minds of many Americans: How is it that 4 officers shot at one unarmed man? Why is it that 41 bullets were discharged? What factors contributed to the public reaction to the incident and the ensuing outcry? What are the best methods to avoid attitudes and conduct such as those exhibited by Mark Fuhrman in the O.J. Simpson case? What is the best method of identifying officers such as Justin Volpe prior to their abusing inmates as he did in the Abner Louima case? Why do certain ethnically diverse neighborhoods experience very little dissatisfaction with police services where others appear to have heightened unresolved tensions?

Law enforcement groups have asked "What criteria will be used to evaluate whether a police program, practice or training is 'effective' or 'successful'?" Will the Commission collect data? Conduct interviews? Assess curricula? Develop methodology and models? These are valid questions that the Commission in consultation with recognized experts in the field of law enforcement as well as community relations will have to ask and address. These same groups have questions concerning oversight issues that may be particular to one community but not necessarily others. It is expected the

Commissioners and consultants will be able to assess these issues and their impact on delivery of policing services.

It is contemplated that the Commission will act as a study commission and not an investigative commission and, therefore, there is no provision for subpoena power. The limitations on the authorized use of data received by the Commission as well as the confidentiality provision are designed to encourage the unencumbered sharing of information to the greatest extent possible without fear that the information received as well as the Commission's analyses and work product will then become available for use in litigation or to embarrass or attack members of the police and community. Rather, the Committee is interested in hearing from the Commission about its findings and conclusions concerning effective and ineffective training programs being used or tried by police departments and policies and practices in hiring, recruiting and oversight for the Committee's future legislative and funding decisions.

During the Committee's hearing on H.R. 1659 and a U.S. Civil Rights Commission hearing into police practices in New York following the Abner Louima and Amadou Diallo shooting, both civil rights as well as law enforcement witnesses pinpointed enhanced training as the most important means of addressing abusive and deteriorated police/community relations. It is the intention of H.R. 1659 that the Commission's study will assist in identifying those practices which strike the right balance between effective law enforcement and positive relations between police and the community.

A Solution to the Use of Force Controversy

Although individual incidents of excessive use of force can be addressed through the criminal and civil court systems, this avenue of redress does not provide overarching, long term solutions. In addition, the court system has a significant delay in addressing these matters and does not produce solutions designed to remedy the root causes of the excessive or inappropriate use of force. Focusing on the training, hiring, recruitment, oversight and discipline of officers, however, can address the underlying causes.

The Police Training Commission Act of 1999 is designed to be one of the solutions to the occurrences of excessive and inappropriate uses of force, to recruiting and hiring issues that may be related thereto, and to oversight and discipline of officers who engage in inappropriate or excessive use of force.

The Collection of Data on Deaths While In Custody

An estimated 1000 men and women die questionable deaths each year while in police custody or in jail. A number of deaths that occur in state and local jails are ruled suicides, but that determination is often tainted by inadequate record-keeping, investigative incompetence, and physical evidence that suggests otherwise. In addition, many of the individuals listed as "suicides" had been arrested for relatively minor offenses—greatly reducing their incentive to take their own lives. The FY 1998 Commerce, Justice, State and Judiciary Appropriations Act directed the Office of Justice Programs at the Department of Justice to determine the feasibility of creating a single source for annual statistics on in-custody deaths—

including federal, state and local incidents. The provision directs the Attorney General to develop guidelines for the reporting of deaths in custody and requires that at a minimum, the report include (1) the name of the deceased; (2) the gender of the deceased; (3) the ethnicity of the deceased; (4) the age of the deceased; (5) the date, time and location of the death; and (6) a brief description of the circumstances surrounding the death. The FY 1998 Commerce, Justice, State and Judiciary Appropriations Act directed the Office of Justice Programs at the Department of Justice to determine the feasibility of creating a single source for annual statistics on in-custody deaths—including federal, state and local incidents. In March 1998, DOJ reported that this goal is achievable. As H.R. 1659 deals with the issue of police accountability, the committee believes it is appropriate to require that these statistics be reported.

II. H.R. 1659, the "National Police Training Commission Act of 1999"

On May 5, 1999, Congressman Serrano introduced H.R. 1659, the "National Police Training Commission Act of 1999", which Chairman Hyde co-sponsored.

The Act has two components. The first component consists of a grant of seed money to some of the nation's largest and more diverse police departments as well as smaller, regional departments for the purposes of training, hiring and recruiting, and oversight. The second component provides a Congressional oversight mechanism; that is, a Commission to study these departments' use of the grant monies and the effectiveness of the training programs and policing strategies, the hiring and recruiting practices and policies, and oversight policies and practices. In particular, the Commission will focus on these policies and practices as they relate to law enforcement's use of force. The Act calls for the Commission to then report its findings to Congress and to make recommendations regarding its findings of effective programs and policies, including "best practices" and concerning the continued involvement of the federal government in these areas—both in terms of oversight as well as funding. At the conclusion of the Commission, a report will be forwarded to Congress detailing the findings of the study and its recommendations as to further Congressional involvement and funding of these programs.

The selection of the police departments was not based on determinations that they had particular excessive use of force issues. Rather, in recognition that all police departments around the country have and are experiencing use of force issues. The bill identifies the following cities: New York, New York, Chicago, Illinois, Los Angeles, California, the District of Columbia, Charlotte, North Carolina, and to one police department from each of the 4 geographical regions of the country (northeast, south, midwest, and west) 2 of which have less than 100 police officers and 2 of which have less than 300 police officers, as determined by the National Police Training Commission. Their police departments are the following sizes: Washington D.C. (3512 sworn members), New York (39,000 sworn members), Chicago (14,000 sworn members), Los Angeles (10,000 sworn members), Charlotte (1385 sworn members), two (10 sworn members each) and 2 (300 sworn members each).

These cities were selected not because they have unique problems with police training or the use of force. Rather, these cities were selected because by virtue of their differing sizes they will present the Commission with data of a wide array of issues concerning police/citizen contacts and in turn issues surrounding the use of force. Many of these cities have a greater diversity in the communities served by the police departments and also therefore present the opportunity to study the delivery of policing services to minority and ethnically and culturally diverse communities. Additionally, the cities are geographically diverse, with major police departments spread from Washington D.C. in the East, Chicago in the Midwest and Los Angeles in the West as well as Charlotte in the southeast, with four smaller departments (two with less than 300 officers and two with less than 100 officers) in the northeast, south, Midwest and west. In this way, the Commission will have access to the greatest array of information to study on uses of force, hiring and recruitment practices and oversight and disciplinary matters of local police departments.

It is the intention of the Committee that the police departments receiving grant monies will direct those monies to the purposes mentioned in H.R. 1659 and for enhanced training in these areas. The Commission's study however will not necessarily be limited by the purposes to which the monies are directed and can embrace any of the study topics addressed in H.R. 1659 in addition to the departments' uses of the grant monies. This decision not to limit the Commission's study is to reflect the Committee's intention that the Commission provide meaningful recommendations on effective law enforcement training, including "best practices" as part of its report and in recognition of the fact that use of force issues are effected by a number of factors including hiring and recruiting practices, training and oversight and disciplinary practices.

The $3 million in grant monies for training will be distributed to the departments identified in proportion to the number of sworn members of the police departments. It is estimated that enhanced training, excluding the cost of certain equipment necessary and incidental to that training, will cost approximately $50.00 per police officer for a training program designed to benefit an entire department to a $100.00 per police officer for a more specialized training program designed, for example, to train officers in select communities where there are more pronounced difficulties in police/community relations or for more specialized training. Flexibility in administering the grant monies will be necessary and should not be strictly limited to amounts premised on these calculation. Further, flexibility will be necessary in the departments with 100 to 300 officers as the small size of the departments might increase the costs of training programs they might select. Thus, it is estimated that Washington D.C would receive approximately $350,000 in grant monies; that Chicago would receive approximately $700,000, New York approximately $1 Los Angeles approximately $500,000, Charlotte approximately $70,000 and approximately $100,000 to be distributed to the four smaller cities.

Monies for equipment is permitted where the equipment is necessary and incidental to the particular training programs selected by the local police departments. However, the monies that may be

spent on equipment are limited to 10% of the total grant monies received by a department. Thus, it is expected that to the extent a department seeks to focus some of its training monies on, for example, non-lethal use of force training, such as use of pepper sprays and similar technologies, that up to 10% of the grant monies received may be devoted to the purchase of the technologies necessary and incidental to this training. While it is not possible to anticipate all equipment that could be deemed necessary and incidental, it is also anticipated that a department could purchase some video equipment to the extent that the video equipment might be used in training officers in the area of community involvement and interaction. Of course, these training videos must be made available to the Commission subject to the restrictions on the use of data and confidentiality provisions contained in H.R. 1659.

It is expected that because these larger departments experience a wide range of contacts between police and citizens, their activities will provide better insight into a wider range of effective training programs in the use of force areas identified in the bill. In turn, this diversity will offer greater assistance to Congress and police departments for future consideration of effective training programs and policing strategies, hiring, recruiting, and oversight policies and practices.

The Commission is to be a bipartisan Commission comprised of knowledgeable professionals with policing, sociological, organizational and other relevant law enforcement experience. Four Commission members will be selected by the Speaker of the House, the House Minority Leader, the Senate Majority Leader and the Senate Minority Leader. Those 4 members will then select the fifth member and together they will determine the Chairman of the Commission. The Commission will have the ability to call upon appropriate experts and knowledgeable persons and resources both inside and outside of government in performing its oversight study.

HEARINGS

The Full Committee held a day of hearings on H.R. 1659 on May 12, 1999. Testimony was received from U.S. Representatives Jose Serrano, Gregory W. Meeks, and James T. Walsh; Julius Davis, Deputy Chief of the Los Angeles Police Department; Edward A. Flynn, Chairman of the Police Executive Research Forum Legislative Committee and Chief of Police for Arlington County; Martin L. Pfeifer, Trustee for the Fraternal Order of Police; Callie L. Baird, Administrator In Charge of the Office for Professional Standards of the Chicago Police Department; Charles B. Roberts, Assistant Deputy Superintendent for the Chicago Police Department; Terrence W. Gainer, Assistant Chief of Police for the District of Columbia Metropolitan Police Department; Hiliary Shelton, Director of the Washington Bureau of the NAACP; Ronald Hampton, President of the National Black Police Association; Gerald Papa, youth community counselor in New York City; and Madame Kadiato Diallo, mother of Amadou Diallo. Additional material was submitted by Clarence N. Wood, President of the Human Relations Foundation of Chicago, Illinois and Robert T. Scully, Executive Director, National Association of Police Organizations, Inc.

COMMITTEE CONSIDERATION

On May 19, 1999, the Full Committee met in open session and ordered favorably reported the bill H.R. 1659, as amended, by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

The bill was reported favorably by voice vote. There were eight amendments resolved by voice vote. Chairman Hyde's technical amendment passed by voice vote and provided for language suggested by the Congressional Budget Office, excluded persons holding elective office from serving as Commissioners, changed the length of the Commission and the due date for the report from 180 days to 1 year after the Commission began, provided that Commissioners would not be compensated for their service on the Commission, limited the permissible uses of the information acquired by the Commission and provided for its confidentiality, added a Federal Tort Claims Act provision to protect members and personnel on the Commission, allowed the Commission to conduct hearings, permitted no more than 10% of the grant monies to be used for the purchase of equipment necessary and incidental to the training to be conducted by the police departments in accordance with the bill, and requiring that the police departments receiving the grant monies provide written assurances that the Commission will have access to their operations. Mr. Hutchinson offered an amendment which passed by voice vote as amended to add one police department from each of four geographical regions of the country (northeast, south, midwest and west) to the list of cities whose police departments would receive grant monies and be the subject of the Commission's study. Mr. Watt offered an amendment to Mr. Hutchinson's amendment which passed by unanimous consent to add Charlotte, North Carolina. Mr. Scott offered an amendment to Mr. Hutchinson's amendment providing that 2 of the police departments selected would have less than 100 police officers and 2 would have less than 300 police officers.

Mr. Scott offered an amendment to amend Section 20101(b) of the 1994 Violent Crime Control and Law Enforcement Act to provide for the collection of data on deaths of persons in custody which was adopted by voice vote as amended. Mr. Conyers and Ms. Jackson Lee offered an amendment that passed by voice vote to add the word "perjury" to the oversight items to be studied by the Commission, to add the term "best practices" to the Commission's study of effective training programs, to include the "relationship between police and prosecutors" to the oversight items to be studied by the Commission, and to include "initial and continuing cultural diversity training" as one of the training programs.

Ms. Jackson Lee offered an amendment to strike the cities of New York, Chicago and Los and insert ten jurisdictions to be determined by the Attorney General of the United States with priority given to jurisdictions with a history of law enforcement misconduct as the cities to receive grant monies and to strike the grant monies amount of $3,000,000 and to insert language providing for such sums as may be necessary. The amendment was defeated by voice vote. Mr. Conyers and Ms. Waters offered an amendment condi-

tioning all distributions of grant monies under the bill on the abolition of any provision that might permit law enforcement officers to delay answering questions posed by internal review boards. That amendment was defeated by voice vote. Ms. Waters offered an amendment to require the Department of Justice to perform its mandate and to carry out its duties under Section 14141 of the 1994 Violent Crime Reduction and Law Enforcement Bill by reporting to Congress every six months the cases being investigated and the amount of funds spent and needed to comply wit the law which failed by voice vote.

In addition, there were four recorded votes during the Committee's consideration of H.R. 1659, as follows:

1. An amendment offered by Mr. Conyers to establish and adequately funded and effective civilian review board or comparable agency for all law enforcement officials of the particular jurisdiction with a history of misconduct. Defeated 9 to 13.

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Berman	Mr. Gekas
Mr. Boucher	Mr. Coble
Mr. Nadler	Mr. Gallegly
Mr. Watt	Mr. Canady
Ms. Jackson Lee	Mr. Goodlatte
Ms. Waters	Mr. Jenkins
Ms. Baldwin	Mr. Hutchinson
Mr. Weiner	Mr. Pease
	Mr. Cannon
	Mr. Rogan
	Ms. Lofgren
	Mr. Delahunt

2. An amendment offered by Ms. Waters to authorize not less than $1,080,000 in new funds for expenses related to the enforcement against pattern and practice discrimination under 42 U.S.C.A. 14141. Defeated 13 to 15.

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Frank	Mr. Gekas
Mr. Berman	Mr. Coble
Mr. Nadler	Mr. Smith
Mr. Watt	Mr. Gallegly
Ms. Lofgren	Mr. Canady
Ms. Jackson Lee	Mr. Goodlatte
Ms. Waters	Mr. Chabot
Mr. Meehan	Mr. Barr
Mr. Delahunt	Mr. Jenkins
Mr. Rothman	Mr. Hutchinson
Ms. Baldwin	Mr. Pease
Mr. Weiner	Mr. Cannon
	Mr. Rogan
	Mr. Scarborough

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1659, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 27, 1999.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1659, the National Police Training Commission Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for federal costs), who can be reached at 226–2860, and Lisa Cash Driskill (for the state and local impact), who can be reached at 225–3220.

Sincerely,

DAN L. CRIPPEN, *Director.*

H.R. 1659—National Police Training Commission Act of 1999.

Summary

H.R. 1659 would authorize the appropriation of $3 million for fiscal year 2000 for the Attorney General to provide training and other assistance to law enforcement agencies of selected cities. The bill also would establish the National Police Training Commission. Assuming appropriation of the necessary funds, CBO estimates that implementing H.R. 1659 would result in additional discretionary spending of about $4 million over the 2000–2004 period.

This legislation would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 1659 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any requirements imposed on states would be a condition of receiving certain grants under the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322).

Estimated cost to the Federal Government

The estimated budgetary impact of H.R. 1659 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

For the purposes of this estimate, CBO assumes that the amounts authorized by the bill for training and other assistance to law enforcement agencies will be appropriated by the start of fiscal year 2000 and that outlays will follow the historical spending patterns of similar programs administered by the Department of Justice.

SPENDING SUBJECT TO APPROPRIATION

[By Fiscal Year, in Millions of Dollars]

	2000	2001	2002	2003	2004
Spending Under Current Law					
Authorization Level [1]	6	0	0	0	0
Estimated Outlays	3	2	1	0	0
Proposed Changes					
Estimated Authorization Level	4	0	0	0	0
Estimated Outlays	2	1	1	0	0
Spending Under H.R. 1659					
Estimated Authorization Level [1]	10	0	0	0	0
Estimated Outlays	5	3	2	0	0

[1] The 2000 level is the amount authorized for training assistance for law enforcement agencies in Public Law 103–322. That law also authorized funding for training assistance for 1999 and previous years, but to date, no funds have been appropriated for that purpose.

The National Police Training Commission, composed of five members appointed by the Congress, would prepare a report within one year on the effectiveness of various personnel and funding policies for law enforcement agencies. CBO expects that the commission would hire a small staff, meet once a month, and gather extensive testimony from witnesses. Assuming appropriation of the necessary amounts, CBO estimates that the commission would cost about $700,000 in fiscal year 2000.

Pay-as-you-go considerations

None.

Estimated impact on state, local, and tribal governments

H.R. 1659 contains no intergovernmental mandates as defined in UMRA. The bill would authorize $3 million to be distributed among nine communities for police training and assistance. The bill also would require states to collect data on deaths occurring in the process of arrest or in state or local correctional facilities, as a condition of receiving certain grants under the Violent Crime Control and Law Enforcement Act of 1994.

Estimated impact on the private sector

The bill would impose no new private-sector mandates as defined in UMRA.

Estimate prepared by

Federal Costs: Mark Grabowicz (226–2860), Impact on State, Local, and Tribal Governments: Lisa Cash Driskill (225–3220).

Estimate approved by

Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1 provides that the short title of the bill is the "National Police Training Commission Act of 1999".

Section 2 establishes the Commission and titles it "National Police Training Commission".

Section 3 provides the details of the Commission.

Subsection (a) provides that there will be 5 members: the Senate majority and minority leaders will each appoint one; the Speaker of the House and minority leader will each appoint one; and the fifth will be appointed by these four members.

Subsection (b)(1) specifies who is eligible to be appointed as a member of the Commission and specifies that they are to have expertise in law enforcement, training, and may be from the public or private sector (excluding those holding elective office) and may include federal, state or local police officers, members of academia, non-profit organizations or other interested individuals.

Subsection (b)(2) specifies the qualifications necessary for membership on the Commission and include civil and criminal litigation experience, administrative and management experience in law enforcement in major and/or smaller cities, and community relations.

Subsection (c) specifies a that the term of membership on the Commission will correspond to the life of the Commission.

Subsection (d) provides that the life of the Commission will be 1 year following the initial appointment of four members.

Subsection (e) provides the mechanism for filling vacancies on the Commission.

Subsection (f) provides that the Commission will meet at the call of the Chair.

Section 4 provides that the functions of the Commission are to (a) study the effectiveness of training, recruiting and hiring, oversight and discipline and the funded programs and (b) report within 1 year of the initial appointment of 4 members on the results of its study and with recommendations.

Section 5 provides authority for certain administrative functions including (a) obtaining information from federal agencies (b) that Commission members will not be compensated

(c) reimbursement of travel expenses (d) staffing of the Commission, their compensation and the detailing of government employees (e) the procurement of expert services (f) meetings (g) a quorum, voting and rules (h) the authorized and limited uses of the information acquired by the Commission (i) a confidentiality provision permitting the Commission to restrict certain information from being made public by the Commission (j) the application of the Federal Tort Claims Act to Commission members and personnel and (k) the availability of hearings by the Commission for the receipt and taking of evidence and testimony.

Section 5 provides compensation for experts and other persons hired on an intermittent basis to assist the Commission in its study and recommendations to Congress.

The bill limits the use of data received by the Commission to research, statistical and reporting purposes. It provides for the confidentiality of not only the identity of any law enforcement officer and member of the public in addition to any additional confidentiality provisions the Commission may impose. H.R. 1659 permits the Commission to hold hearings for the purpose of receiving testimony and other evidence it deems important to its mission. Rather, this Section requires as a condition to receiving grant monies that the cities identified cooperate with the Commission by making its training, hiring and recruiting and oversight activities available to the Commission for review and study.

Section 6 amends the Crime Control Act of 1994 to permit training not simply of management level police but also of the rank and file officers in the areas addressed in this bill and authorizes the expenditure of $ 3 M from the Violent Crime Reduction Trust Fund authorizations FY 2000 to the cities and locations mentioned in the bill, following receipt by the Department of Justice, of written assurances from the grant recipients that they will provide access to their operations to the Commission.

Section 7 is intended to amend the Crime Control Act of 1994 to require that states receiving certain grant monies assure that recipients of the grant monies adhere to reporting guidelines issued by the Attorney General in recording deaths of persons in custody. The reporting requirements include reports to the Attorney General on a quarterly basis and include (1) the name, gender, ethnicity, and age of the deceased; (2) the date, time, and location of death; and (3) a brief description of the circumstances surrounding the death.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

* * * * * * *

TITLE XXI—STATE AND LOCAL LAW ENFORCEMENT

* * * * * * *

Subtitle E—Improved Training and Technical Automation

SEC. 210501. IMPROVED TRAINING AND TECHNICAL AUTOMATION.

(a) * * *

* * * * * * *

(b) TRAINING AND INVESTIGATIVE ASSISTANCE.——

(1) IN GENERAL.—The Attorney General shall, subject to the availability of appropriations——

(A) expand and improve investigative and managerial training courses for State, Indian tribal, and local law enforcement agencies *, and provide, under paragraph (4), training, recruitment, hiring, and oversight assistance*; and

* * * * * * *

(4) The training, recruitment, hiring, and oversight assistance under paragraph (1)(A) shall be given to the following cities: New York, New York, Chicago, Illinois, Los Angeles, California, Washington, District of Columbia, and Charlotte, North Carolina, and to one police department from each of the 4 geographical regions of the country (northeast, south, midwest, and west) 2 of which have less than 100 police officers and 2 of which have less than 300 police officers, as determined by the National Police Training Commission The assistance may include funding for equipment, not to exceed 10 percent of the amount of the grant made to each city. The money appropriated for such assistance shall be distributed to those locations in proportion to the size of their police departments and upon receipt of written assurances from the police department that the department will provide access to its operations to the Commis-

sion. There are authorized to be appropriated for fiscal year 2000 for the purposes of such assistance the sum of $3,000,000.

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MINORITY VIEWS TO H.R. 1659, THE NATIONAL POLICE TRAINING COMMISSION ACT OF 1999

It should now be clear to all members, and the nation at-large, that police misconduct is a manifest issue. The litany of incidents is familiar and has incendiary potential for our cities.[1] Faced with such compelling evidence, the majority asks for yet another commission to study problems that we all know to exist. While we understand and applaud the motives behind this legislation, we, and a host of advocacy groups spanning the civil rights and law enforcement communities, believe that the energies of Congress should be focused on the adoption of legislative priorities that would address the substance of law enforcement management and strengthen the current battery of tools available to sanction misconduct.[2] The incremental approach of H.R. 1659 misses a real opportunity to initiate reforms that would restore public trust and accountability to law enforcement.

At the most basic methodological level, H.R. 1659 lacks recommendations to define the mission and guide the study of the National Police Training Commission (the "Commission") and selects a random number of cities, without any stated selection criteria. At best, we are concerned that the Commission's study will generate the kind of anecdotal data already in existence on the issue. As to substance, H.R. 1659 fails to address major subjects that impact on the issue of police misconduct, including, "so called" 48-hour rules, civilian review procedures, pattern and practice enforcement (42 U.S.C.A. 14141) and deprivation of rights under order of law (18 U.S.C.A 242). Given the pervasiveness and seriousness of the issues at hand, our attention is better spent on the implementation of solutions, rather than merely on the continuing study of an obvious problem. Our concerns with the approach taken by the committee-reported bill are as follows:

I. The Commission's Study Will Not Yield New Relevant Data

At the hearing on H.R. 1659, The Police Executive Research Forum ("PERF") highlighted the methodological weaknesses of H.R. 1659's approach to studying the issue of police misconduct.[3] PERF was especially critical of H.R. 1659's short Commission duration and of the ambiguity of its mission. While the Commission's term was extended from six months to one year by amendment, we are concerned that its mission remains clouded in ambiguity. Historically, research in this area has been particularly hampered by

[1] Amadou Diallo—Unarmed West African immigrant—shot 41 times by New York City police. Nineteen year old African American shot 12 times in the back as she sat in her car—Riverside, California. Louima—Haitian immigrant—sexually assaulted by New York City police. Rodney King—beaten by four Los Angeles police officers. A New Orleans woman murdered by police officer against whom she filed a complaint (officer convicted and on death row).

[2] *See* studies by Amnesty International , ACLU, and The NAACP.

[3] Judiciary Hearing on May 12, 1999.

the lack of data for a range of subjects critical to determining why police officers "go wrong" and to determining the actual effectiveness of programs designed to address police misconduct.[4] However, H.R. 1659 gives the Commission no guidance on how to focus its effort. Further, given the multiplicity of factors tied to the issue of police misconduct, it is still unclear whether one year is sufficient to yield sound new recommendations or will simply result in reiteration of the recommendations already on the table.

The lack of selection criteria for participating jurisdictions also will limit the Commission's study to anecdotal proof already present in abundance.[5] As originally submitted to the Committee, the Commission was to center its research efforts on four (subsequently expanded to nine) cities and award their law enforcement agencies grants from a pool of $3,000,000 to ensure cooperation.[6] Unfortunately, there was no scientific methodology guiding the selection process. As a consequence, there is no evidence that the Commission will generate statistically significant sample data for the nation's 17,000 law enforcement agencies.

With H.R. 1659, we risk waiting another year to receive only superficial determinations on an issue that merits our most serious consideration and action now. Due to its lack of guidance or methodology, there is a substantial likelihood that the Commission will merely recount the myriad of training, recruitment and oversight programs under consideration in cities across the country.

II. H.R. 1659 Fails to Address the 48-Hour Rule

At our hearings, numerous questions were raised regarding the appropriateness of the New York City Police Department's "48-Hour Rule," which allows police officers to refuse to speak to ranking officers conducting internal investigations for two full business days following the time they are identified as suspects in alleged misconduct.[7] Additionally, under the rule, police who are potential witnesses in a criminal case are not required to submit to an interview until four hours after they have been identified as witnesses.[8] If, at any time during the investigation of an offense, an officer acting as a witness becomes a suspect, the 48-hour rule goes into effect.[9] We are concerned that this rule, and similar rules and procedures, have the potential to undermine the integrity of police misconduct investigations. Yet nowhere is this concern mentioned or referenced in the legislation's text.[10]

New York City's 48-hour rule came about, in part, because—in civil matters—government employees do not have a right against self-incrimination and can be compelled to respond to inquiries about their public duties. They also may face punishment or termi-

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[4] Samuel Walker, *Citizens Review of the Police*—1998 Update, Department of Criminal Justice, University of Nebraska at Omaha, March 1998, at 4.

[5] *See e.g., Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*, New York: The Commission, 1994 at 85; *Citizen Review of Police Conduct Task Force Report*, Santa Clara County Bar Association, April 28, 1992; Christopher Commission, *Report of the Independent Commission on the Los Angeles Police Department*, Los Angeles: The Commission, 1991.

[6] While the number of focus jurisdictions was expanded from four to nine, the pool of funds for participating cities was held at $3,000,000.

[7] *New York Police Department Patrol Guide*, § 118-9.

[8] *Id.*

[9] *Id.*

[10] See H.R. 1659 §4.

nation for refusing to answer such questions or lying in response to such questions. The New York City Police Department's Patrol Guide states that officers who are suspects in an alleged offense must answer questions "specifically directed and narrowly related to official duties" or face suspension.[11] To balance this requirement with an officers' Fifth Amendment right against self- incrimination, the 48-hour rule was established to give officers an opportunity to consult with an attorney before submitting to questioning. It later became a collective bargaining issue when it was included in the Police Benevolent Association's contract with New York City in 1991.[12]

Many—including Chairman Hyde—have expressed concern that the 48-hour rule merely gives police officers 48 hours to "get their story straight" and, in so doing, reduces the reliability of police testimony and diminishes the public perception of police truthfulness.[13] Beyond the issue of perception, the delay may allow investigators to lose their intensity and focus as time passes and as they begin to work on other matters.[14] Again, the concern is that, the longer investigators must wait to question a suspect, the greater the possibility that vital evidence may disappear or be lost.[15]

Other investigations have determined that extreme versions of the 48-hour rule are unnecessary and detrimental to investigations and public confidence in investigations.[16] In the wake of the August 8, 1997 assault of Abner Louima by New York City police officers, New York City Mayor's office established a "Task Force on Police/Community Relations" (the "Task Force") and granted the Task Force the power to make recommendations.[17] The Task Force recommended, among other things, that the New York City Police Department abolish the 48- hour rule.[18]

As these kinds of rules and procedures are becoming more prevalent with the adoption of law enforcement officer "bills of rights," serious research should be completed to assist in the development of guidelines that give officers a reasonable period of time, depending on the circumstances of the inquiry, to consult with an attorney before they are questioned.[19] By omission, H.R. 1659 fails to provide any guidance to the Commission on how to address 48-hour

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[11] *Id.*

[12] Article XIX of the Police Benevolent Association contract with the City of New York for 1991 (renewed in 1995) states: "The Guidelines for Interrogation of Members of the Department, in force at the execution date of this Agreement, will not be altered during the term of this Agreement, except to reflect subsequent changes in the law or final decisions of the Supreme Court of the United States and the Court of Appeals of the State of New York regarding the procedures and conditions to be followed in the interrogation of a member of the Department."

[13] *Deflecting Blame: The Dissenting Report of Mayor Rudolph W. Giuliani's Task Force on Police/Community Relations* (1998).

[14] *Id.*

[15] *Id.*

[16] Although the New York rule appears to be anomalous, it is our nation's largest city and therefore worthy of national study. In Chicago, officers who injure or kill someone while on duty must give an oral statement to a commanding officer "without delay." The Los Angeles Police Department also takes statements from officers at the scene of a shooting. To avoid subsequent complaints by officers that they were harassed into talking, those under investigations are assured by officers that their statements will not be shared with Los Angeles prosecutors. "No Questions Asked: New York Rules Means It's Tough to Convict Police in Diallo Case," *Wall Street Journal*, April 7, 1999.

[17] *Id. Deflecting Blame: The Dissenting Report of Mayor Rudolph W. Giuliani's Task Force on Police/Community Relations* (1998).

[18] In response, New York Mayor Giuliani denounced the Task Force as "small minded," "silly," and "cop bashers" and, shortly thereafter, disbanded the Task Force. *Id.*

[19] *Id.*

type rules and, therefore, fails to consider an important substantive issue.

III. H.R. 1659 Fails to Address the Issue of Civilian Review Procedures

The bill also fails to address or consider the impact of civilian review procedures. Civilian review of police activity was first proposed in the 1950's because of a widespread dissatisfaction with the internal disciplinary procedures of police departments. In general, civilian review authorities receive, process, and investigate claims of abuse against police officers. Civilian review procedures exhibit a wide range of variation, from sworn boards with investigatory authority to groups with mere review authority of internal police investigations.[20] Currently, civilian review boards are in place in some 94 jurisdictions at the state and local level, including New York and Chicago. This figure represents a 42% increase since 1995 and a 147% increase since 1990. Estimates indicate that civilian review procedures cover law enforcement agencies responsible for approximately 25% of the nation's population, and three-quarters of our 50 largest cities.[21]

While civilian review has been opposed by some as being intrusive, research indicates that if properly structured and funded, such procedures yield a range of community benefits. These include the fact that civilian review establishes the principle of police accountability. Research indicates that a complaint review system encourages citizens to act on their grievances and makes it easier and less threatening for civilians to file complaints against abusive police officers and practices.[22] In addition, a civilian review agency can be an important source of information about police misconduct in a community. A civilian agency is more likely to compile and publish data on patterns of misconduct, especially on officers with chronic problems, than is a police internal affairs agency.

Moreover, civilian review can alert police administrators to the steps they must take to curb abuse in their departments, eliminating reliance on internal affairs for reporting facts that may place their department in a negative spotlight. For example, many well intentioned police officials have failed to act decisively against police brutality because internal investigations did not provide them with the facts.[23] Also, civilian review creates an atmosphere conducive to further reform. The existence of a civilian review agency, a reform itself, encourages a climate of reform that can help ensure that other needed reforms are implemented. While a police department can formulate other model policies aimed at deterring and punishing misconduct, those policies can be difficult to implement in effective manner unless a system is in place to guarantee that those policies are aggressively enforced.

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[20] *See*, Samuel Walker and Betsy Wright Kreisel, Varieties of *Citizen Review: The Implications of Organizational Features of Complaint Review Procedures for Accountability of the Police*, American Journal Of Police, XV 1996: 65-88. Walker, *Citizens Review of the Police* at 3.

[21] *Id.* Samuel Walker, Citizens Review of the Police at 1.

[22] American Civil Liberties Union of Northern California, *Civilian Review Fact Sheet*, May 1999 at 1.

[23] Samuel Walker and Betsy Wright Kreisel, *Varieties of Citizen Review*, *American Journal of Police*, XV, 1996, at 65-88.

Many cities and some states have adopted the civilian review mechanisms, but often times the boards are never given an opportunity or funding to serve their function. For example, New York City's board has been plagued by charges of conflict of interest and Washington D.C.'s board has never been fully funded.[24] H.R. 1659 represented a unique opportunity for Congress to take a stand on the vital issue of civilian review. Again, the bill does not include civilian review in the list of items to be studied.[25] Accordingly, H.R. 1659 misses another critical opportunity to respond to the issue of police accountability.

IV. Full Funding and Empowerment of the Civil Rights Division Will Enhance Protections Against Police Misconduct

H.R. 1659 fails to provide full funding for the Civil Rights Division. One of the most effective means of combating police misconduct was provided through the expanded use of Justice Department's investigative authority. Major incidents of police misconduct—King, Louima and Diallo—could be addressed by expanding the reach of the various statutes authorizing such investigations or authorizing and providing for increased funding. Unfortunately, when full funding for the Civil Rights Division was proposed, it was rejected by the majority. The legislation similarly ignores the issue of expanded investigative authority under either 42 U.S.C.A 14141 or 18 U.S.C.A 242. At a time when we are experiencing a national crisis of police misconduct, we should revisit the Justice Department's pattern and practice and criminal investigative authority to ensure that the Justice Department has the authority and resources necessary to protect the public interest.

The Administration has requested $82.2 million for the Civil Rights Division of the Justice Department. We believe that the Division should be funded at the full request. Discrimination continues to be a persistent problem in American society, and there is more than sufficient information suppoting the request of the Administration to enforce the civil rights laws. Among other things, the Administration's budget proposal would provide much needed resources in the Department's fight against civil rights violations, including 16 positions to combat police misconduct.

One of the principal means of combating police misconduct against minorities is through Justice Department "Pattern and Practice" investigations under 42 U.S.C. § 14141. Created as part of the 1994 Crime Bill, § 14141 makes it unlawful for any police department or other governmental agency to engage in a "pattern or practice" of depriving persons of their civil rights.[26] This section also gives the Attorney General the power to obtain civil equitable and declaratory relief necessary to eliminate the pattern or practice of behavior.[27] The Department of Justice has used this section to obtain a consent decree with the Pittsburgh Police Department, is in negotiations with New Jersey and has an ongoing investigation against the New Orleans Police Department. Also, as a related matter, section 14142 requires the Attorney General to collect in-

[24] Samuel Walker, *Achieving Police Accountability*, Research Brief, Sept. 1998, at 3&5.
[25] See H.R. 1659 §4.
[26] 42 U.S.C. § 14141(a).
[27] *Id.* § 14141(b).

formation regarding the use of excessive force by police departments nationwide. As of May 14, 1999, the Justice Department has resolved two § 14141 investigations through consent decrees, has nine investigations in progress, is conducting ten preliminary investigations,[28] has closed ten preliminary investigations, and resolved numerous investigations with no further action (indicating the Department found no § 14141 violations).

The Division's success is compelling and provides a blueprint for further action. On February 26, 1997, the Justice Department negotiated its first ever consent decree pursuant to a § 14141 investigation with the Pittsburgh, PA, Police Department.[29] The agreement established guidelines for training, supervision, discipline, and complaint procedures for the police department.[30] Specifically, the agreement requires that officers complete a brief report for a range of civilian encounters, including, each stop, use of force, arrest, shooting or citizen complaint. Salient data (race and gender of the person stopped) will be reviewed by the police, an auditor established by the decree, and the Justice Department.[31] While it has been criticized by some for micro-managing the police department,[32] the decree also has been praised for bringing the Pittsburgh police into the twentieth century.[33]

In addition, the Department and the Steubenville, OH, Police Department reached an agreement on August 26, 1997, that aimed to reform police management practices, training, complaint review, and management of at-risk officers.[34] This investigation and the resulting consent decree were the culmination of several police misconduct lawsuits that had been filed against Steubenville over twenty years, many of which resulted in settlements in favor of the victim-plaintiffs.[35]

Aside from these two cases, the Department is negotiating with the State of New Jersey and the Columbus, OH, Police Department to resolve pending § 14141 litigation through consent decrees. On April 30, 1999, the Attorney General of New Jersey announced that the State of New Jersey would negotiate with respect to a two-year Justice Department investigation that the New Jersey State Police were engaged in widespread racial profiling against black and Hispanic motorists.[36] This is the first time a statewide law enforce-

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[28] The Department would give no further definition of "preliminary investigation" other than to say that it is when evidence is gathered.

[29] Johnna A. Pro & John Schmitz, CITY BOWS TO U.S. ON POLICE REFORMS, PITTSBURGH POST-GAZETTE, Feb. 27, 1997, at A-1. For ten months, the Department investigated the Pittsburgh police for excessive use of force, false arrests, and improper searches and seizures. *Id.*

[30] *Id.*

[31] At the end of the five-year term of the agreement, and if the city can show that it met the terms of the agreement for two consecutive years, the city can petition the U.S. District Court to have the decree terminated. *Id.*

[32] Jodi Nirode, *What's in Store for Police? Pittsburgh Abuse Settlement may be Revealing*, COLUMBUS DISPATCH, Oct. 21, 1998, at 1A; Chuck Bosetti, *Pittsburgh Police: Betrayed and Abused*, PITTSBURGH POST-GAZETTE, Dec. 14, 1997, at B-1.

[33] Johnna A. Pro, *Justice Department Consent Decree Pushes Police to Overhaul Operations*, PITTSBURGH POST-GAZETTE, Mar. 1, 1998, at C-1.

[34] The agreement requires that officers complete a brief report whenever force is used against an individual, whenever a vehicle is stopped, or whenever searching or seizing property; salient data (race and gender of the person stopped) will be reviewed by the police, an auditor established by the decree, and the Justice Department *Id.*

[35] Doug Caruso, *Before Columbus, There was Steubenville*, COLUMBUS DISPATCH, Aug. 9, 1998, at 1A.

[36] The announcement came ten days after Governor Christine Todd Whitman acknowledged that the Federal investigation showed some officers routinely engaged in racial profiling when

ment agency has negotiated with the Department pursuant to a § 14141 investigation.[37] During the Summer of 1998, the Justice Department began similar negotiations with Columbus, OH.[38] As of early 1999, the city was close to reaching an agreement with the Justice Department.[39]

The Justice Department is conducting several investigations of major metropolitan police departments, many of which have been expanded several times during their course. For instance, the Washington, DC police chief himself asked the Justice Department to investigate the rash of fatal police shootings that have occurred in the District.[40] In New York, the U.S. Attorneys for the Eastern and Southern Districts are investigating the New York City Police Department for police brutality; the investigation started because of the Abner Louima incident.[41] As a result of the widespread allegations of abuse on the part of the New York City Police Department, the Justice Department is considering whether to appoint a monitor for the department.[42]

The Justice Department is conducting a third major investigation into the Los Angeles Police Department based on allegations that the police were engaged in a pattern or practice of civil rights abuses surfaced during the Rodney King incident.[43] In 1996, the Department broadened its investigation into claims that the police generally use excessive force and are insensitive to minorities.[44] The Justice Department is conducting other investigations for excessive force and improper searches in New Orleans, LA; Orange County, FL; and Eastpointe, MI, but the exact nature and status of those investigations is not available to the public.

In light of such extraordinary effort and success by the Justice Department, the majority's failure to provide further support for pattern and practice enforcement is troubling. In addition to elevating symbol over substance through the establishment of yet another Commission, it shows a lack of commitment to combating police misconduct by the federal government, where issues of systemic discrimination by local law enforcement agencies can best be addressed. In this manner, worse than missing an opportunity,

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stopping motorists. Jerry Gray, *New Jersey Plans to Forestall Suit on Race Profiling*, N.Y. TIMES, Apr. 30, 1999, at A1.

[37] *Id.*

[38] In July 1998, the Department stated that it had found a pattern of officers using excessive force, making false arrests, lodging false charges, and conducting illegal searches and seizures. Doug Caruso, *City, Justice Department Near Deal on Changes for Police*, COLUMBUS DISPATCH, Feb. 4, 1999, at 8C.

[39] *Id.*

[40] Cheryl W. Thompson, *Trained Teams to Probe Police Shootings*, WASH. POST, Jan 21, 1999, at B1.

[41] David Kocieniewski, *Precinct Silence on Louima is Still under Investigation*, N.Y. TIMES, Feb. 27, 1998, at B5; Joseph P. Fried, U.S. Takes over the Louima Case, N.Y. Times, Feb. 27, 1998, at A1. In July 1998, the Federal prosecutors in New York expanded their investigation into the Anthony Baez incident, in which an officer who had received numerous complaints choked an individual to death. Benjamin Weiser, *Prosecutors Broaden Investigation into Police Brutality*, N.Y. TIMES, July 3, 1998, at B4. In February 1999, the investigation was expanded again because of the Amadou Diallo shooting. Benjamin Weiser, *Frisking Policy of the Police Faces Scrutiny*, N.Y. TIMES, Mar. 19, 1999, at B1; Robert D. McFadden & Kit R. Roane, *U.S. Examining Killing of Man in Police Volley*, N.Y. TIMES, Feb. 6, 1999, at A1.

[42] Jack Newfield, *Feds May Soon Appoint Monitor for NYPD*, N.Y. POST, Mar. 23, 1999, at 6.

[43] Pierre Thomas, *Possible 'Pattern' of Abuse in LAPD Probed by Justice*, WASH. POST, Oct. 20, 1995, at A1.

[44] Pierre Thomas, *U.S. Widens Investigation of LA Police*, WASH. POST, Oct 4, 1996, at A3.

H.R.1659 represents a failure to understand and act on the critical, time sensitive nature of the issue.

V. H.R.1659 is Likely Unconstitutional

H.R. 1659 raises a constitutional issue by vesting the function of selecting the recipients of federal assistance with the Commission, a majority of whose members would be legislative branch appointees. In light of the separation of powers doctrine and the appointments clause, as interpreted by the Supreme Court, H.R. 1659 would likely be held unconstitutional.

The Supreme Court has established clear legal guidelines in several cases involving the relationship of the separation of powers doctrine to the appointments clause (art. II, sec. 2, cl. 2),[45] congressional authority to appoint and remove government officials, and the related issue of Congress' role in the enforcement of the laws that it enacts. The Court held in *Buckley* v. *Valeo* that "any appointee exercising significant authority pursuant to the laws of the United States" is either an "office of the United States" required to be appointed by the President, with the advice and consent of the Senate, or is an "inferior officer" who must be appointed by the President, a department head, or a court.[46] In *Bowsher* v. *Synar*,[47] the Court held that the Comptroller General, who is appointed by the President but subject to removal by Congress, could not constitutionally perform the executive functions of making revenue predictions and specifying budget reductions that would be binding on the President. And, although not involving an appointment or removal question, the landmark decision in the legislative veto case, *INS* v. *Chadha*, recognized strict limits on Congress' role after it enacts legislation.[48] In brief, for reasons rooted in the appointments clause and the separation of powers doctrine, the decisions of the Court noted above have confined Congress to its legislative role, and have prohibited the House and Senate from directly or indirectly enforcing the laws it passes, or from having a power of appointment or removal over those who execute the laws.[49]

Because four of the five members of the Commission are not appointed pursuant to the appointments clause but instead are appointed by the congressional leadership (with the fifth member being selected by the other four), the Commission will be considered a legislative branch entity and its members will neither be officers nor inferior officers of the United States. No constitutional issue is raised by vesting in the Commission investigative or study functions, such as those that might be performed by a congres-

[45] The appointments clause states that "[The President] shall nominate, and by and with the advice and consent of the Senate, shall appoint... all officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments."

[46] 424 U.S. 1, 126 (1976). *Buckley* invalidated provisions of the Federal Election Campaign Act that permitted the Federal Election Commission (FEC)—four of whose six voting members were appointed by congressional officers and subject to confirmation by both Houses—to perform various enforcement and administrative functions under the act. For detailed review of the appointments clause in light of the separation of powers doctrine, *see id.* at 111-135.

[47] 478 U.S. 714, 730 (1986).

[48] 462 U.S. 919 (1983).

[49] The limits on congressional involvement in execution of the laws are reviewed in Antieau, *Modern Constitutional Law*, Vol. 3, sec. 46.15 (2nd ed. 1997).

sional committee.[50] However, selecting one police department from each of four geographical regions in the United States to receive training, recruitment, hiring, and oversight assistance would seem to be an executive function.[51] Because the members of the Commission are not selected in accordance with the appointments clause, vesting in them the function of selecting the recipients of federal assistance would likely be held constitutionally dubious.[52]

CONCLUSION

Expert testimony at our hearings supports the contention that the issue of police misconduct has been subject to a myriad of studies. With the notable exception of the data on deaths in custody provision, which was added by amendment, H.R. 1659 does not significantly advance the field.[53] The current national climate requires decisive action to implement solutions. H.R. 1659 is a missed opportunity at each step, as the above discussion of programs illustrates. As a Congress we have been enthusiastic about supporting programs designed to get officers on the street. We must be just as willing to support programs designed to train and manage them after they get there. Because H.R. 1659 fails to address substantively the issue of law enforcement management and conduct, we offer these minority views.

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[50] *Buckley*, 424 U.S. at 137.

[51] *Cf. id.* at 134 (determination by FEC of eligibility for funds was function to be performed by persons selected in accordance with appointments clause).

[52] Congressional Research Service, Memorandum: Constitutional Issue Concerning Proposed National Police Training Commission, May 20, 1999.

[53] Section 7 of H.R. 1659 amends the violent crime control and Law Enforcement Act of 1994 to require the Attorney General to collect data, based upon stated criteria, on the death of any person in the custody of law enforcement officials. Currently there is no repository for such information. Systematic collection of death in custody data will be important to determining the urgency and scope of the issue.