

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## ASSEMBLY, No. 4656

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 16, 2021

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4656 (1R), with committee amendments.

As amended, this bill would authorize municipalities and counties to establish civilian review boards to review police operations and conduct. These boards would serve to foster transparency, fairness, and equality in policing practices and policies, which in turn will help promote positive relations between police and the local communities they serve.

A municipal civilian review board would consist of an odd number of members, appointed by the mayor or other chief executive officer of the municipality with the consent of the governing body of the municipality, as described in the bill. A county civilian review board would consist of an odd number of members appointed by the board of county commissioners or the county executive, the county supervisor, or the county manager, as applicable, with the consent of the board of county commissioners. A county civilian review board would have jurisdiction over only county-run police departments or its sheriffs' departments. If no county civilian review board exists, a county sheriff's officer would be subject to investigation by the municipal civilian review board for incidents that take place within the municipality. A municipality may, by ordinance, elect to be a participating municipality subject to the civilian review board established by the county within which it is located. Upon adoption of such ordinance, the clerk of the municipality would submit copies of the ordinance to the county civilian review board.

The members of a civilian review board (board) would be residents of the municipality or county, as applicable, who are qualified persons with training or experience as described in the bill. They would serve according to the resolution specifying the term length for each member.

Members and employees of a board would be required to take a training course no less than once every two years. The Attorney General would be required to develop a training course within 45 days of the bill's effective date and offer the first course as soon as practicable thereafter. A board could not investigate the conduct of

any law enforcement officers, or recommend the imposition of discipline of such officers or members, unless the member or employee has completed this training.

The bill provides, however, that a municipality with less than 2,500 inhabitants would be allowed to fill seats on the municipality's civilian review board with individuals who reside in that municipality or who reside in contiguous municipalities. Additionally, a municipality with less than 2,500 inhabitants would be permitted to form a joint municipal civilian review board with a neighboring municipality of any size provided that each municipality has at least one seat on the civilian review board and that the number of seats on a joint municipal civilian review board would be proportionately allocated based on the population of each municipality.

A board would be permitted to utilize resources of the municipality or county to the extent that funds for the utilization of such resources are made available by the municipality, county, State, or other entity.

The bill establishes duties of a board to include:

- (1) investigations, as described in the bill;
- (2) recommending the establishment of policies;
- (3) reviewing and investigating complaints, as described in the bill;
- (4) recommending the imposition of discipline; and
- (5) reviewing any completed internal affairs investigation, as described in the bill.

A board could only initiate one of these actions in response to a civilian complaint of excessive or unnecessary force, abuse of authority, offensive language, or false or misleading statements made during an investigation. Additionally, a board may also initiate an action after the initial review is undertaken by a department's internal affairs unit.

A department's internal affairs unit is required to provide their entire case file to the board for the case under the board's review. If the board determines that additional information or witness testimony is needed, a board is required to have the limited power to subpoena witnesses and documentary evidence, directly related to the inquiry, which subpoenas are to be enforceable, or subject to an appropriate motion to quash, in the Superior Court, as limited and provided for under the bill.

The bill requires a board to refer complaints to the internal affairs unit of the applicable law enforcement agency. If the internal affairs unit does not complete an investigation within 120 days of receipt of the complaint, the board may initiate an investigation over the subject of the complaint. Furthermore, if the internal affairs unit of the applicable law enforcement agency completes their investigation, a civilian review board may proceed in initiating an investigation over the subject of the complaint. Any concurrent investigations conducted by the civilian review board and the internal affairs unit of the applicable law enforcement agency shall comply with any protocols

for such concurrent investigations that are adopted pursuant to the bill. If the internal affairs unit, upon receipt of a complaint decides not to investigate a complaint, the internal affairs unit shall within 14 days provide in writing a notice to the civilian review board of the unit's decision. Upon receiving this notice from the internal affairs unit, a civilian review board may proceed to immediately investigate the complaint.

The bill permits an ordinance or resolution establishing a board to set forth guidelines for the operation of the board consistent with the provisions of the bill. If an allegation or complaint contains evidence that an officer or member of the police force of the municipality or county violated State criminal law, the board would report such allegation or complaint to the county prosecutor or the Attorney General. If an allegation or complaint contains evidence that an officer or member of the State Police violated State or federal criminal law, the civilian review board would promptly report such allegation or complaint to the Attorney General's Office. If an allegation or complaint contains evidence that an officer or member of the police force of the municipality or county violated federal criminal law, the civilian review board shall promptly report such allegation or complaint to the United States Attorney's Office.

Under the bill, a board and the State, county, or local law enforcement agency subject to review by the board would jointly adopt protocols that facilitate the ability of each entity to coordinate concurrent disciplinary investigations by the board and the internal affairs unit of the law enforcement agency. The Attorney General would develop sample protocols for this purpose, which would be made available to law enforcement agencies and boards.

A board would report its findings and recommendations concerning police operations and conduct to the mayor or other chief executive officer of the municipality, the governing body of the municipality, the chief of police or other chief law enforcement officer of the municipality, the county prosecutor, and, in the case of a municipality in which the State Police serves in the capacity of a municipal police force for the municipality, the Superintendent of State Police and the Attorney General.

The bill provides that the chief of police or other chief law enforcement officer of the municipality or county, or the Superintendent of State Police, as applicable, would, within 60 days after the receipt of recommendations provided by a board, provide a written response to the board on whether the police force of the municipality or county, or the operation conducted in the municipality by the State Police to the extent it serves in the capacity of a municipal police force for the municipality, will follow the recommendations of the board and if not, a written explanation of the reasons therefor. If the chief of police or other chief law enforcement officer cannot make a final determination whether to follow the recommendations of the board within 60 days, the chief of police or other chief law

enforcement officer would provide the board in writing the reasons for delay and anticipated time to fully comply, and provide the final determination as soon as a determination is made. Additionally, investigations of complaints filed with a board would be conducted in confidence and without publicity, and the board would hold confidential any information obtained concerning an investigation while the investigation is pending.

Under the bill, all records of a board would be confidential and unavailable to the public while an investigation is pending, and all personal identifying information would be confidential and unavailable to the public at all times. After an investigation is concluded, all board records would be accessible to the public in accordance with the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.), as provided for in the bill. The bill specifies certain information that would be confidential and unavailable to the public, regardless of the status of an investigation.

The bill would require that a civilian review board expeditiously adopt a conflict of interest policy that, at a minimum, describes inherent conflicts of interest which would entirely preclude a member or employee of a board from serving the board and incident-specific conflicts of interest which would require members or employees of a board to recuse themselves from a particular matter brought before the board. Civilian review board members and employees would sign a sworn statement affirming compliance with the board's adopted conflict of interest policy prior to the commencement of their service or upon the adoption of the policy.

The bill provides that a board member that has been convicted of either a first or second degree crime during the past 10 years prior to becoming a board member, would not be eligible to serve on a civilian review board.

Under the bill, any person who, with the intent to injure another, purposely discloses any information concerning the proceedings of a board, other than as authorized or required by law, commits a crime of the fourth degree. A member or employee of a board who is convicted of a violation of this section would be removed from that person's position as a member or employee of the board.

The bill also provides that the "Internal Affairs Policy and Procedures" of the Police Management Manual promulgated by the Police Bureau of the Division of Criminal Justice in the Department of Law and Public Safety be revised to require certain disclosures to the appropriate authority, as well as any board.

Under the bill, the Attorney General would develop a uniform electronic civilian complaint system for all police departments to conspicuously post on their municipal Internet websites for members of the public to anonymously submit complaints of law enforcement misconduct. The submitted complaints would be made solely available to the head of the department's internal affairs unit, the municipal or county civilian complaint review board if one exists, and

the chief of police or other chief law enforcement officer of the municipality. Additionally, all anonymous complaints would be confidential.

Lastly, the bill establishes in the Department of Law and Public Safety a special, dedicated nonlapsing fund to be known as the “Civilian Review Board Training Fund.” The fund would be credited with moneys made available from an appropriation of \$800,000.

COMMITTEE AMENDMENTS:

The committee amendments:

- Add language to the findings and declarations;
- Clarify that a municipality can establish municipal civilian review board, establish a joint municipal civilian review board, join a county civilian review board, or choose to not establish or join a civilian review board;
- Clarify that the recommendation to impose discipline on such officer by the municipal official or entity responsible for disciplinary decisions, in addition to being consistent with any tenure or civil service laws and contractual agreements, must also consider utilizing a standard of review provided by the governing ordinance or resolution;
- Provide that subpoenas are also subject to an appropriate motion to quash in Superior Court;
- Permit a civilian review board to initiate an investigation over the subject of a complaint and require the board to also provide the complaint to the internal affairs unit of the applicable law enforcement agency;
- Provide that if the internal affairs unit, upon receipt of a complaint pursuant to this section, decides not to investigate a complaint, the internal affairs unit would within 14 days provide in writing a notice to the civilian review board of the unit’s decision to not investigate the complaint. Upon receiving this notice from the internal affairs unit, a civilian review board may proceed to immediately investigate the complaint;
- Clarify that any concurrent investigations conducted by the board and the internal affairs unit of the applicable law enforcement agency must comply with any protocols for such concurrent investigations that are adopted pursuant to the bill;
- Provide that if an allegation or complaint contains evidence that an officer or member of the police force of the municipality or county violated federal criminal law, the board must promptly report such allegation or complaint to the United States Attorney’s Office;
- Remove discourtesy as grounds for an actionable complaint;
- Add that a municipality with less than 2,500 inhabitants may fill seats on their municipal civilian review board only with

individuals that reside in contiguous municipality, and a municipality with less than 2,500 inhabitants may form a joint municipal civilian review board as described in the bill;

- Require that a civilian review board adopt a conflict of interest policy that, at a minimum, describes inherent conflicts of interest which would entirely preclude a member or employee of a board from serving the board and incident-specific conflicts of interest which would require members or employees of a board to recuse themselves from a particular matter brought before the board, and civilian review board members and employees would sign a sworn statement affirming compliance with the board's adopted conflict of interest policy prior to the commencement of their service;
- Remove language that provided that after an investigation had concluded, all records made, maintained, or kept on file by a civilian review board would have been accessible to the public in accordance with the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.);
- Require civilian review board members and employees to sign a sworn statement affirming compliance with the board's adopted conflict of interest policy prior to the commencement of their service or upon adoption of the policy;
- Provide that a board member that has been convicted of either a first or second degree crime during the past 10 years prior to becoming a board member, would not be eligible to serve on a civilian review board;
- Add that a municipality may, by ordinance, elect to be a participating municipality subject to the jurisdiction of the county civilian review board established by the county within which it is located. Upon adoption of such ordinance, the clerk of the municipality would submit copies of the ordinance to the county civilian review board;
- Provide that a civilian review board could only recommend that the Attorney General investigate or review an allegation or complaint related to operations conducted in the municipality by the State Police, to the extent it serves in the capacity of a municipal police force for the municipality; and
- Provide that if an allegation or complaint contains evidence that an officer or member of the State Police violated State or federal criminal law, the civilian review board would promptly report such allegation or complaint to the Attorney General's Office.

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.