

ASSEMBLY COMMUNITY DEVELOPMENT AND AFFAIRS
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 4656

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 17, 2021

The Assembly Community Development and Affairs Committee reports favorably and with committee amendments Assembly Bill No. 4656.

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.

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.

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, discourtesy, 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 power to subpoena witnesses and documentary evidence, directly related to the inquiry, which subpoenas are to be enforceable 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. Additionally, upon request by a federal, state, county, or local law enforcement agency conducting a criminal investigation into or prosecution against an individual who is the subject of a complaint filed with a board, the board is required to stay its investigation until the criminal investigation or prosecution is complete, as provided for in the bill. The outcome of the criminal investigation or prosecution would not limit the board's ability to investigate a matter or recommend administrative sanctions.

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 or federal criminal law, the board would report

such allegation or complaint to the county prosecutor or the Attorney General.

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. 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:

- Adds a "findings and declarations" section;
- Provides that a municipal civilian review board would consist of an odd number of at least three members, as opposed to the original number of seven members, with appointment to be made as specified in the bill;
- Allows for an ordinance to specify the term length for each municipal civilian review board member;
- Provides that a majority of members of a municipal civilian review board would constitute a quorum;
- Removes the provision that the chairperson and vice-chairperson of the municipal civilian review board would serve for terms of two years and may be reappointed;
- Provides that a municipal civilian review board member may be removed, as provided in the bill;
- Provides that a municipal civilian review board member may receive compensation for their services as opposed to requiring the compensation of these board members;
- Provides that each member and employee of a municipal civilian review board is required to complete a training course no less than once every two years;

- Allows for members and employees of a municipal civilian review board established by ordinance adopted prior to January 1, 2020 may review or investigate the conduct of law enforcement officers subject to their jurisdiction, or recommend the imposition of discipline of such officers for up to six months following the effective date of this bill;
- Provides that a county civilian review board would consist of an odd number of at least three members, as opposed to the original number of seven members, to be appointed as provided for in the bill;
- Clarifies that a county civilian review board would have jurisdiction over only county-run police departments or its sheriffs' departments and 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;
- Allows for a resolution to specify the term length for each county civilian review board member;
- Provides that a majority of members of a county civilian review board would constitute a quorum;
- Removes the provision that the chairperson and vice-chairperson of the county civilian review board would serve for terms of two years and may be reappointed;
- Provides that a county civilian review board is required to complete the training course no less than once every two years;
- Provides that a county civilian review board member may be removed, as provided for in the bill;
- Provides that a county civilian review board member may receive compensation for their services as opposed to requiring the compensation of these board members;
- Provides that a board may review and investigate complaints filed with the board concerning the conduct of any officers or members of the police force of the municipality or county, or those members of the State Police undertaken while serving in the capacity of a municipal police force for the municipality;
- Provides that a review board may review any completed internal affairs investigation that is alleged to have missed evidence of police misconduct or failed to properly discipline law enforcement officer misconduct;
- Adds that board may initiate an action in response to false or misleading statements made during an investigation;
- Provides that 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;
- Provides that a board may not subpoena any information or record that is related to a pending federal, state, or county criminal investigation, and the board is required to make a

motion before the Superior Court for permission to issue any subpoena;

- Provides that upon receipt of a complaint, a board is required to refer the case to the internal affairs unit of the applicable law enforcement agency and 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 and 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;
- Provides that upon certain requests by an agency conducting a criminal investigation, the board would stay its investigation until the criminal investigation or prosecution is complete, as provided for in the bill;
- Provides that if an allegation or complaint contains evidence that an officer or member of the police force of the municipality or county violated State or federal criminal law, the board would promptly report such allegation or complaint to the county prosecutor or the Attorney General;
- Calls on a board and the State, county, or local law enforcement agency subject to review by the board to 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 and for the Attorney General to develop sample protocols for this purpose, which would be made available to law enforcement agencies and boards;
- Provides that the chief of police or other chief law enforcement officer of the municipality or county, or the Superintendent of State Police, is required, 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, and 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 is required to 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;
- Provides that 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;

- Provides that after an investigation is concluded, all records made, maintained, or kept on file by a board are required to be accessible to the public;
- Adds that 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;
- Calls on the Attorney General to 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;
- Establishes in the Department of Law and Public Safety a special, dedicated nonlapsing fund to be known as the "Civilian Review Board Training Fund;
- Provides the "Internal Affairs Policy and Procedures" to establish procedures and protocols governing the disclosure of reports, complaints, and other investigative materials, including video, sound, or any other recording requested by the appropriate authority or board;
- Appropriates \$800,000 from the General Fund to the Civilian Review Board Training Fund, in order to fund the civilian review board training courses; and
- Makes technical corrections.