

HOUSE BILL REPORT

HB 1203

As Reported by House Committee On:
Public Safety

Title: An act relating to community oversight boards.

Brief Description: Concerning community oversight boards.

Sponsors: Representatives Johnson, J., Harris-Talley, Bateman, Simmons, Gregerson, Valdez, Berry, Riccelli, Santos, Ryu, Ramel, Sells, Ortiz-Self, Goodman, Berg, Dolan, Tharinger, Macri, Fey, Davis, Ramos and Frame.

Brief History:

Committee Activity:

Public Safety: 1/26/21, 2/4/21 [DPS].

Brief Summary of Substitute Bill

- Requires any local jurisdiction with a law enforcement agency that has at least 15 officers to establish a community oversight board by January 1, 2025.
- Outlines powers and duties of community oversight boards, and provides guidelines for establishing board operations and membership.
- Requires any local jurisdiction with an existing oversight body to bring the existing body into alignment with the requirements for community oversight boards by January 1, 2023.
- Requires the Washington Association of Sheriffs and Police Chiefs to report to the Legislature regarding local jurisdictions' compliance with oversight board requirements.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by 9 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Davis, Hackney, Lovick, Orwall, Ramos, Simmons and Young.

Minority Report: Do not pass. Signed by 4 members: Representatives Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Graham and Griffey.

Staff: Omeara Harrington (786-7136).

Background:

In general, local governments have broad discretion as to how they deliver police services, and the size and structure of local law enforcement agencies varies. In counties, law enforcement and public safety services fall to local county sheriff's offices. Many cities and towns have established their own municipal police departments. Other cities and towns contract with another local jurisdiction to provide police services.

Some local governments have additionally established oversight, advisory, or review bodies made up partially or entirely of civilian community members for the purpose of overseeing and advising on the activities of the local law enforcement agency. The structure of these bodies differs among jurisdictions, with some bodies operating within, or in collaboration with, the local law enforcement agency, and others operating wholly independently from the agency. Examples of the activities of these bodies include, but are not limited to: investigating allegations of police misconduct and making recommendations for responsive actions; reviewing the findings of agency internal investigations; investigating citizen complaints or reviewing the agency's resolution of citizen complaints; and making recommendations for changes to law enforcement policy and practice.

Summary of Substitute Bill:

All local jurisdictions must establish a community oversight board by January 1, 2025. Local jurisdictions include all cities, towns, and counties with a law enforcement agency that has 15 or more officers and serves directly under the authority of the jurisdiction, rather than by contract or agreement with another jurisdiction. As an alternative to establishing a stand-alone community oversight board, a combination of local jurisdictions that have an existing mutual aid agreement with one another for law enforcement services may establish a joint community oversight board by intergovernmental agreement.

All community oversight boards must have certain powers and duties with respect to the law enforcement agency serving under the authority of the local jurisdiction, including:

- receiving complaints from community members regarding the conduct of law enforcement officers and civilian employees of the law enforcement agency;
- investigating and issuing findings on incidents that occur between the public and law

enforcement officers or civilian employees, including incidents involving: use of force by an officer; death of or serious injury to person in custody; serious abuse of authority or misconduct by an officer; allegedly discriminatory stops or other profiling activity; adversarial interactions occurring at public assemblies; and other adverse incidents related to the conduct of officers or civilian employees.

Community-reported complaints must be investigated whenever possible, and findings must be issued within 120 days. If an investigation is not possible, the board must provide notice and reasoning to the complainant;

- making recommendations for officer or civilian employee discipline in cases involving serious breaches of departmental or professional standards. Any recommendation must be accompanied by a report of supporting information and submitted to the employing agency and, if pertaining to an officer, to the Criminal Justice Training Commission;
- holding hearings and issuing subpoenas, if necessary, to compel any person to appear, give sworn testimony, or produce evidence relevant to a matter under inquiry;
- reviewing and making recommendations for changes to agency policies, practices, and procedures. If the agency declines to implement any of the board's recommendations, it must produce a written public record detailing its rationale;
- reviewing internal investigations for accuracy, completeness, impartiality, and sufficiency of any resulting discipline;
- making budgetary recommendations to the local legislative body concerning future appropriations to the law enforcement agency;
- accessing crime scenes and related administrative investigations, including preliminary evidence and other information, as needed, provided that such access is in a manner that protects the integrity of the crime scene or investigation. The board's access must not be more limited than the access granted to the press;
- making public reports on the activities of the board;
- participating on hiring panels for any vacancy in the position of chief of police; and
- undertaking other duties, as identified by the local jurisdiction, that are reasonably necessary for the board to effectuate its purposes.

Community oversight boards may not conduct criminal investigations, and community oversight board investigations must not take precedence over, or interfere with, any in-progress criminal or internal investigation conducted by a law enforcement agency or independent investigative team, or any other independent investigation body. Law enforcement agencies and their officers are immune from civil liability for claims or damages arising solely out of the negligent actions or inactions of the corresponding community oversight board.

Each local jurisdiction must establish the policies and procedures for its community oversight board including, at a minimum, policies and procedures for: the number of board members; composition and appointment of membership; meetings and hearings; communication with the public and receipt of complaints; access to files, records, and other information, and requirements for maintaining any confidentiality of those documents;

training of board members; and the performance of the board's duties and other functions. Boards must maintain multiple methods for submitting and reviewing the status of complaints, including both online and in-person methods.

Each local jurisdiction must provide training for its community oversight board's members either by utilizing existing resources within the jurisdiction or by contracting with other jurisdictions or organizations. At a minimum, training must include: law enforcement ride-alongs; simulations, unless logistically or cost prohibitive; curriculum on relevant laws and available data; and anti-bias training. As a condition of continued board membership, community oversight board members must complete the training within 90 days of initial appointment and any reappointment. Local jurisdictions must also provide adequate funding for the community oversight board's staffing and for performance of the community oversight board's functions and duties.

A portion of a community oversight board's positions must be filled by members of the public through a public posting and application process. A community oversight board must, whenever possible, reflect the diversity of the community in which it is located and include members of families affected by law enforcement violence, justice-involved individuals, and representatives of civil rights advocacy organizations. Certain persons are ineligible to serve on a community oversight board, including: law enforcement officers and employees; immediate family members of law enforcement officers; and persons who receive payment pursuant to contract with, or work for an entity that receives payment pursuant to contract with, the law enforcement agency that the community oversight board oversees.

The requirements for the powers, duties, and structure of community oversight boards apply to any newly created board. Local jurisdictions with a similar oversight body in place at the time the bill takes effect must bring the body into compliance with the community oversight board framework by January 1, 2023, except to the extent that full compliance would violate a federal consent decree or other mandate. "Similar oversight bodies" include any law enforcement oversight or advisory bodies that are external to the law enforcement agency being overseen, and may include, but are not limited to, police ombudsman offices and citizen advisory, review, and oversight boards. If a local jurisdiction has multiple similar oversight bodies in place that collectively fulfill the community oversight board functions, the local jurisdiction may continue to maintain multiple oversight bodies instead of a singular community oversight board as long as each body complies with the community oversight board membership requirements.

Local jurisdictions must report their compliance with the community oversight board requirements to the Washington Association of Sheriffs and Police Chiefs (WASPC) by the full compliance date of January 1, 2025. The WASPC must compile the information into a report to the Legislature by March 1, 2025.

Substitute Bill Compared to Original Bill:

The scope of the bill is narrowed to apply only to local jurisdictions with a law enforcement agency that has 15 or more officers, rather than 10 or more officers. Local jurisdictions are authorized to establish a joint community oversight board with other local jurisdictions with whom they have a mutual aid agreement for law enforcement services. The requirements for local jurisdictions to convert existing similar oversight bodies to the community oversight board model are modified to: (1) allow those jurisdictions until January 1, 2023, rather than January 1, 2022, to come into compliance; and (2) allow local jurisdictions with multiple similar oversight bodies in place that collectively fulfill the community oversight board functions to continue to maintain multiple oversight bodies rather than a singular community oversight board as long as each body complies with the community oversight board requirements for board membership.

Local jurisdictions are required to provide training to community oversight board members that includes law enforcement ride-alongs, simulations, curriculum covering relevant laws and available data, and anti-bias training. As a condition of continued board membership, community oversight board members must complete the training within 90 days of initial appointment and any reappointment.

Certain provisions are removed, including:

- the provision authorizing community oversight boards to obtain outside legal counsel;
- the provision stating that the annual budget for a community oversight board must be equal to or greater than 5 percent of the total funds allocated in the local jurisdiction for law enforcement purposes; instead, the local jurisdiction must provide adequate funding for its board's staffing and for performance of the community oversight board's functions and duties; and
- the provision requiring a mayor or other appointing party to fill any vacancy in the position of chief of police from a list of qualified candidates produced by the local jurisdiction's community oversight board; instead, the hiring panel for the chief of police position must include one or more members of the community oversight board.

Provisions are added stating that community oversight boards may not conduct any criminal investigations. Additionally, community oversight board investigations must not take precedence over, and may not interfere with, any in-progress criminal or internal investigation conducted by a law enforcement agency or independent investigative team, or any other independent investigation body. An immunity provision is added stating that a law enforcement agency and its employees are immune from civil liability for claims and damages arising solely out of the negligent actions or inactions of the corresponding community oversight board.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 5, 2021.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Transparency and community oversight are critical components of just and fair governance, especially with respect to the exercise of law enforcement functions. Recent events have sounded a call for a renewed and multifaceted approach to police accountability. Establishing community oversight boards is one essential step, as current police oversight mechanisms have proven insufficient. Far too often, calls for accountability have led to police investigating police and community complaints going unheard. Fewer than one in 12 public complaints lead to disciplinary action. Police do the right thing when being watched, and bad policing is often the result of bad policy. Increased oversight will lead to better policies to avoid adverse incidents. Successful oversight requires independence, resources, and power. This bill will empower communities to hold law enforcement accountable.

The public's opinion matters with respect to these issues, and they should not have to fight this hard to be heard. Existing advisory boards are symbolic or created by law enforcement, and members of the community are not at the table. This creates a cycle of distrust, and the only way to disrupt it is with community oversight. Some say communities should not have this much power, but if there was not police violence it would not be needed. Unimpeded access to files continues to be a challenge. The oversight agency must have a relationship to its core functions, which is why it should be able to subpoena documents and evidence. National standards for civilian oversight have independence as one of the most important concepts, which is why the community oversight boards in the bill do not include law enforcement. These changes are vital on the east side of the state, even in cities with established oversight. These changes will build public trust and public safety, and will shift power back to the community.

There have been grave transgressions against communities of color. There have been many incidents of people being killed, maimed, or shot at by the police; often these are ruled as justified and the police have not been held accountable. When discipline happens it is often overturned through the arbitration process. A horrific video was released of an officer plowing through a crowd of people, and the body that will investigate the incident is a local investigation team. Officers should not be investigating officers. Police have qualified immunity, police union contracts make firing and discipline difficult, and prosecutors have conflicts because they work closely with involved officers. The community is hurting. Change is needed to offer hope to the next generation and a point of contact for the community to move past the trauma that has been inflicted upon it. In many communities the distrust between law enforcement and community members goes both ways, and leads to a lot of hurt and pain. Accountability must be on both sides.

The funding threshold is excessive. Allocating funding should be the work of the elected

officials to ensure that funds are allocated in an equitable manner. Access to crime scenes and matters related to privilege should be clarified.

(Opposed) Law enforcement strives to increase trust with communities, to provide professional and unbiased service, and to engage in active and ongoing communication. Under existing structures, law enforcement already is subject to oversight in that sheriffs are elected and police chiefs are appointed by a mayor or city manager. Communities can already establish oversight boards, but this bill requires communities to do so when they have chosen not to. The structure in the bill also goes beyond the authority of current boards and micromanages departments. The provisions relating to selection of candidates for chief of police are inappropriate. These changes will do more to cause fractures in communities than they will lead to collaboration.

There are issues with the provision that allows boards to select outside counsel. Constitutionally and statutorily the prosecuting attorney is the attorney for the county. There is also no requirement for any factual basis behind allegations or investigations. The subpoena authority raises significant concerns, both with respect to documents involved in active investigations and compelled testimony. Current investigative teams are subject to confidentiality requirements related to access to reports and crime scenes. Allowing retired law enforcement officers that never worked for the agency would be helpful in terms of adding members with relevant experience.

The budget component will cause further financial strain on cities that are already stretched. This bill creates an unfunded mandate, as the new responsibilities with respect to creating oversight boards and funding private counsel are not funded. There are also issues with maintaining local control.

(Other) This bill takes a step toward ensuring police management is held accountable and, if done properly, will show how professional law enforcement is. Also, transparency is a good thing, and the communities served by law enforcement should have a voice. However there are problems with the bill. Specifically, the subpoena powers will cause problems, particularly with respect to active investigations. There is an absence of qualifications for board members, which is problematic as these boards will have access to private and confidential information. Components of the bill are unclear and overreach.

Civilians can do this work well, and some jurisdictions already have oversight bodies, but more can be done to ensure the bill satisfies the needs of communities. Local jurisdictions should be given more flexibility in determining what entities they create, or to create more than one. Also, caution should be taken to not have oversight boards that are advocates for either communities or the police. It is also concerning that the boards are advisory and cannot compel action.

Persons Testifying: (In support) Representative Johnson, prime sponsor; Girmay Zahilay, King County Council; Paula Sardinias, Washington Build Back Black Alliance; Jacob

Green, National Organization of Black Law Enforcement Executives; Kurtis Robinson, Sam Martin, and Lyn Idahosa, Washington for Black Lives; Ophelia Noble, The Noble Foundation; and Priscilla Lisicich, Safe Streets.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs; Jon Schuldt, City of Renton Chief of Police's Office; Juliana Roe, Washington State Association of Counties; and Russell Brown, Washington Association of Prosecuting Attorneys.

(Other) Jeff DeVere, Washington Council of Police and Sheriffs; Andrew Myerberg, City of Seattle Office of Police Accountability; and James Schrimpsheer, Washington State Fraternal Order of Police.

Persons Signed In To Testify But Not Testifying: Evan Cook, Restoring Mindz; and Logan Camporeale.