

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

S

1

SENATE BILL 682

Short Title: Citizens Review Board. (Public)

Sponsors: Senators deViere, Chaudhuri, and Foushee (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 8, 2021

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE THE USE OF CITIZENS REVIEW BOARDS TO INVESTIGATE
OR REVIEW ALLEGATIONS OF CERTAIN MISCONDUCT BY LAW
ENFORCEMENT OFFICERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-289.3. Citizens review board.

(a) A city may by ordinance establish a citizens review board to review appeals of disciplinary actions involving allegations of misconduct by law enforcement officers employed by that city's law enforcement agency. The ordinance shall comply with this section and shall specify at least all of the following:

(1) The composition of the citizens review board, which shall be between five and 11 members.

(2) The qualifications to serve on the citizens review board, which shall at a minimum include all of the following:

a. No member may be employed by the city.

b. Each member must be a qualified voter of the city.

c. Each member must attend a citizens' academy, if available.

d. Each member must have completed a ride-along with a law enforcement officer within one year of appointment.

e. No person is eligible to serve as a member if that person has been convicted in the last five years of either a felony against this State, the United States, or another state, or a Class A1 misdemeanor, and has not been restored to the rights of citizenship in the manner prescribed by law.

f. Each member must submit to a criminal background check that includes all criminal history, if any, from the last five years.

g. No member may be an immediate family member of any law enforcement officer employed by the city. For purposes of this sub-subdivision, immediate family shall be as defined in G.S. 163A-250.

(3) The procedure for appointing members to the citizens review board, which shall include application to the city and unanimous approval by the city council for appointment.

(4) The manner in which hearings of the citizens review board are to be held.



* S 6 8 2 - V - 1 *

(b) All members shall meet all qualifications set out in this section, and any additional qualifications set out in the ordinance, prior to appointment. Members shall serve for a term of two years and shall not serve two consecutive terms. Members may be removed for cause. Vacancies shall be filled in accordance with the ordinance. At the first meeting, and every two years thereafter, the board shall select a chairman and vice-chairman from amongst its membership. Meetings shall be upon call of the chairman if no regular meeting schedule is set forth in the ordinance.

(c) Members shall serve without compensation but may receive reimbursement for expenses in accordance with city ordinance or policy.

(d) Upon accepting the appointment, each member shall sign a confidentiality agreement. Failure to sign, or breach of, the confidentiality agreement shall be a Class 1 misdemeanor, up to a one thousand dollar (\$1,000) fine, and cause for removal.

(e) A citizens review board established by a city under this section shall have the following powers and duties:

(1) Advise the chief officer of a law enforcement agency, including the chief of police, the city manager, and the governing board of a city.

(2) Make findings and recommendations on disciplinary action of a law enforcement officer alleged to have committed misconduct. Such findings by the citizens review board shall be categorized as sustained, not sustained, exonerated, or unfounded.

(3) Recommend changes in policy or training of law enforcement officers to the city council and the head of the law enforcement agency within the city that established the citizens review board.

(f) In the conduct of evidentiary fact-finding proceedings pursuant to this section, any of the following may subpoena witnesses and compel the production of evidence:

(1) The chairman.

(2) The vice-chairman.

(3) A majority of the members of the citizens review board.

If the law enforcement officer that is the subject of proceedings before the citizens review board requests that a witness be subpoenaed to provide testimony or to produce evidence, the citizens review board shall subpoena the witness on behalf of the law enforcement officer.

If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the citizens review board or the law enforcement officer may apply to the General Court of Justice, Superior Court Division, for an order requiring that the subpoena be obeyed, and the court shall have jurisdiction to issue the order after notice to all parties.

(g) A law enforcement officer and any other person involved in a hearing or proceeding before the citizens review board may be represented by an attorney or attorneys at the hearing or proceeding.

(h) A law enforcement officer that is the subject of a hearing or proceeding before the citizens review board shall have the right to:

(1) Notice of the hearing or proceeding, made at least 15 days prior to the hearing or proceeding.

(2) Be heard in order to contest or challenge any allegations, complaints, or charges.

(3) Complete discovery of all evidence in the possession of the city that established the citizens review board, received at least 10 days prior to the hearing or proceeding. This includes the right to receive (i) copies of all exhibits, documents, and items to be used, (ii) a list of all witnesses that may be called to testify, and (iii) a list of each alleged act of wrongdoing, including the date, location, and alleged facts regarding the alleged act of wrongdoing.

- (4) Receipt of all documents, communications, and other evidence provided to the Citizens Review Board related to the hearing or proceeding.
- (5) Object to, confront, and cross examine any witness, document, or other evidence submitted to be used or considered.
- (6) Offer evidence, including, but not limited to, witnesses, documents, and other items.
- (7) Assert all constitutional, civil, administrative, and common law rights, including, but not limited to, the rights of substantive and procedural due process.
- (i) A citizens review board shall not review appeals of decisions of the city manager or governing board of the city.
- (j) Notwithstanding G.S. 160A-168, but subject to any federal law restricting access and the approval of the law enforcement officer being investigated, the head of the law enforcement agency that employs the law enforcement officer alleged to have committed misconduct shall make available to the citizens review board the personnel file of the law enforcement officer and any other material deemed necessary by the governing body of the city for the citizens review board to complete its investigation or review. The citizens review board shall maintain the confidentiality of any information provided to it under this subsection.
- (k) Each element of a finding or recommendation of the citizens review board shall be predicated upon substantial, clear, and convincing evidence. The burden of proof for these elements shall be upon the city that established the citizens review board.
- (l) Any finding or recommendation of the citizens review board as to disciplinary action of a law enforcement officer shall be binding on the head of the law enforcement agency or the city that employs the law enforcement officer and shall be confidential as part of the personnel record. The law enforcement officer, the head of the law enforcement agency, or the city that employs the law enforcement officer may appeal the finding or recommendation of the citizens review board to the General Court of Justice, Superior Court Division, for a trial de novo.
- (m) A citizens review board shall make a semiannual and an annual report of its actions for each preceding year to the head of the law enforcement agency or agencies in the city that established the citizens review board and the governing body of the city that established the citizens review board. The specific content of the reports shall be prescribed by the governing body of the city. Any report made under this subsection by the citizens review board shall be public record.
- (n) No State funds shall be used to establish or operate a citizens review board established under this section.
- (o) A citizens review board established by a city under this section shall have no authority to investigate or review allegations of misconduct by any of the following:
- (1) A law enforcement officer employed by a county police department or sheriff's department located in a county.
- (2) A law enforcement officer employed by a company police agency certified by the Attorney General pursuant to Chapter 74E of the General Statutes.
- (3) A law enforcement officer employed by a campus police agency certified by the Attorney General pursuant to Chapter 74G of the General Statutes.
- (4) A law enforcement officer employed by a special police agency created by the State.
- (p) To the extent that any provisions of a local act may be inconsistent with the provisions of this section, the provisions of this section shall control.
- (q) If a citizens review board requests the advice of independent private counsel regarding a proceeding or action taken pursuant to this Article, the city that established the citizens review board shall provide that representation and shall incur all costs related to that representation.

(r) For purposes of this section, the following definitions shall apply:

(1) Disciplinary action. – An oral or written reprimand, suspension, demotion, or termination.

(2) Discriminatory profiling. – Any action initiated by law enforcement that relies upon the race, ethnicity, or national origin of an individual rather than either:

a. The behavior of that individual.

b. Information that leads law enforcement to a particular individual who has been identified as being engaged in or having been engaged in criminal activity.

Discriminatory profiling includes the use of racial or ethnic stereotypes as factors in selecting whom to stop and search. Discriminatory profiling does not include law enforcement's use of race or ethnicity to determine whether a person matches a specific description of a particular subject.

(3) Head. – Any director or chief officer of a law enforcement agency, including the chief of police of a city.

(4) Law enforcement agency. – A city police department.

(5) Law enforcement officer. – Any employee of a city law enforcement agency who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State and who possesses the power of arrest by virtue of an oath administered under the authority of the State.

(6) Misconduct. – Limited to excessive use of force, abuse of power, and discriminatory profiling."

SECTION 2. G.S. 132-1.4A reads as rewritten:

"§ 132-1.4A. Law enforcement agency recordings.

(a) Definitions. – The following definitions apply in this section:

...

(1a) Citizens review board. – A board or commission legally designed by a city council to review police matters or complaints against a police agency and individual officers.

...

(7) Release. – To provide a copy of a recording.

...

(h) Release of Recordings; Law Enforcement Purposes. – Notwithstanding the requirements of subsections (c), (f), and (g) of this section, a custodial law enforcement agency shall disclose or release a recording to a district attorney (i) for review of potential criminal charges, (ii) in order to comply with discovery requirements in a criminal prosecution, (iii) for use in criminal proceedings in district court, or (iv) for any other law enforcement purpose, and may disclose or release a recording for any of the following purposes:

...

(6) To other local agencies that partner with the custodial law enforcement agency, including municipal and county firefighters, emergency medical services, emergency dispatchers, and operators for any internal investigation, administration decision making, or training purpose.

(7) To school resource officers to disclose the recordings to a juvenile whose image or voice is captured in the recording, parents or the legal guardians of the juvenile whose image or voice is captured in the recording, and principals and other school administrators in the local school administrative unit where the juvenile is enrolled.

(8) To a citizens review board for review of complaints, provided members of the board execute a confidentiality agreement to maintain the confidentiality of

the recording prior to viewing the recording. Recording images may be released to the public by the citizens review board only upon court order.

(9) To identify or locate a potential criminal suspect, victim of a crime, or missing person, provided only a single or limited number of randomly selected still images extracted from the recording are disclosed or released. The image or images shall depict only the face or other identifying characteristics of the criminal suspect, victim of a crime, or missing person.

(10) To the city or county manager upon the manager's request for management and administrative purposes, including police operations review if the custodial law enforcement agency is a municipal police agency or a combined city-county police agency headed by a chief officer other than a county sheriff. Prior to viewing the recording, the manager shall execute a confidentiality agreement to maintain the confidentiality of the recording prior to viewing the recording. Recording images may be released to the public by the manager only upon a court order.

(11) To the city or town council in closed session and upon recommendation of the city or town manager and majority vote of the city or town council, provided members of the city or town council shall execute a confidentiality agreement to maintain the confidentiality of the recording prior to viewing the recording. A member of the council shall be allowed to make statements to restore the public's confidence in law enforcement without breaching the confidentiality agreement or otherwise violating this section. Recording images may be released to the public by the council only upon a court order.

...

(k) No civil liability shall arise from compliance with the provisions of this section, provided that the acts or omissions are made in good faith and do not constitute gross negligence, willful or wanton misconduct, or intentional wrongdoing. Any person who knowingly and willfully discloses or releases a recording in violation of this section shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars (\$500.00).

...."

SECTION 3. G.S. 143-318.11(a) reads as rewritten:

"(a) Permitted Purposes. – It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

...

(10) To view a recording ~~released~~ regulated pursuant to G.S. 132-1.4A."

SECTION 4. Section 1 of this act becomes effective December 1, 2021, and applies to any misconduct committed on or after that date. The remainder of this act becomes effective December 1, 2021.