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States pushing for independent boards to review police misconduct

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Lawmakers in several states are pushing to establish independent review boards that would have control of all investigations over fatal incidents that involve police officers, a move that many police advocacy groups are calling a mistake.

Wisconsin became the first state to enact such a bill, but similar legislation has been proposed in New Jersey, California, New York, Colorado and Missouri.

"This does not take the investigation out of the hands of county prosecutors," said Anne Schwartz, a spokeswoman for the Wisconsin Department of Justice. "Rather, it requires an agency separate from the one that the involved officer is employed by to conduct the investigation."

Laurel Patrick, a spokeswoman for Gov. Scott Walker, who signed the first such statewide bill in April, said the legislation was not designed to attack police but to add more oversight for everyone involved.

"An overwhelming majority of police officers follow procedures and do a good job of protecting and serving the public," she said. "By providing for an independent review, this bill just adds another level of transparency in the investigation process."

Following the deaths of Michael Brown in Ferguson, Missouri, and Eric Garner in New York City during confrontations with police officers, civil rights advocates have pushed for greater oversight of the investigation process following such events. Accusations have flown that the reviews of the fatal shootings by police were not objective since they were often handled by the departments themselves or by local prosecutors who need to have close ties with the officers.

DAs resist proposals

But law enforcement officials argue that removing departments from the overview process creates more problems than it solves.

"I think the proponents of this, they always want to have it both ways," said Bill Johnson, executive director of the National Association of Police Organizations. "If the department, they feel, is too detached from the community, they criticize that. Now they're saying, 'We don't want people too involved in the community to review this.'"

Outside independent investigators can help police departments in some instances by bringing in unique knowledge and perspectives, he said. But establishing a permanent independent review board would lead to situations where the board is passing judgment based on political pressure, not evidence.

"The people who constitute this board, they're going to know the reason they're there in the first place is that people disagreed with the grand jury," said Mr. Johnson, who has worked as both a police officer and prosecutor.

As for Ferguson and New York, "I think there were a large number of independent and thorough investigations," he said. "I think people just didn't like the result."

The federal Department of Justice went ahead with a civil rights probe in the Ferguson case, but several news outlets this week have reported that Justice also will bring no charges.

'Conflict of interest'

Tim Lynch, director of the Project on Criminal Justice at the Cato Institute, disagreed that the recent attention to policing issues has been solely the result of the Brown and Garner cases.

"I think what those cases did was draw more people's attention to the general issues that are involved," he said. "We're not just talking about St. Louis or New York, we're talking more generally about what happens when the police do overreach. What mechanisms are in place to ensure accountability?"

Mr. Lynch, whose website tracks instances of police misconduct nationwide, said he favors special prosecutors because there is an "inherent conflict of interest" when police try to investigate their own actions.

"It's a good idea to have an independent, impartial investigation of allegations of illegal police activity," he said.

It can be unrealistic to expect police to want to send one of their own to prison for murder charges or open themselves up to lawsuits by admitting they made a mistake, Mr. Lynch said,

which means pressure is put on either covering up abuses or trying to brush them off as accidents.

But district attorneys are not persuaded that this is a good reason to take these cases from them. Prosecutors are already independent, argued Josh Marquis, an Oregon district attorney and board member of the National District Attorney's Association.

"Independent [is] exactly what district attorneys are," he said. "In the vast majority of the United States, district attorneys are elected — and sometimes thrown out of office for precisely [because] they're not vigilant enough about police shootings.

"The idea that some appointed person who has no relationship with the community would be more likely to rigorously review a police shooting I don't think is true," Mr. Marquis added. "There is accountability in an elected official."

'Knee-jerk reactions'

With an independent — and likely unelected — review board, "you're not going to get the same kind of accountability, nor are you going to get the understanding of the particular needs of the community," Mr. Marquis said.

"Many prosecutors, certainly myself included, are seeing in state legislatures what I consider knee-jerk reactions to Michael Brown and Eric Garner," Mr. Marquis said.

In 2014, in an effort to make investigations more independent, Mr. Walker, a Republican and presidential contender, signed legislation that would require at least two outside investigators to be involved in any review of "officer-involved deaths."

Support for the Wisconsin law grew from a 2004 incident where Kenosha police fatally shot a young white man, Michael Bell, 21, during a traffic stop. Officers said Bell tried to grab one of their guns, and they were cleared of wrongdoing in the resulting investigation.

But Bell's family hired their own investigators and uncovered enough evidence that contradicted the officers' stories that, in 2010, the city agreed to a nearly \$2 million settlement.

The family used some of the money to buy billboards that read "When police kill, should they judge themselves?"

Now a Colorado state representative, Joe Salazar, is planning to introduce similar legislation for his state by the end of February. His proposal would create a special office to review accusations of police brutality.

"What we're looking at is for the special prosecution office to investigate cases of excessive force where there is substantial bodily harm or death," Mr. Salazar said. "Colorado's had its problems. This isn't just an issue that's taking place in other parts of the country."

He pointed to several recent Colorado cases, including a homeless man who died after being Tasered and put into a chokehold by police, and a prison inmate who died of seizures while prison videotapes show workers "laughing and joking" instead of getting him medical attention, reports say.

In all these cases, governments agreed to pay out millions of dollars for restitution despite there being no indictments, Mr. Salazar said.

"There's only been two indictments since 1987 in the state of Colorado," the representative said. "We want to make it very clear that this isn't targeting police, this is targeting a practice."

Experience of cities

The practice of an independent review board has been more common at the municipal level, where a number of American cities have implemented the idea. But the boards have not been without their critics.

In 2007 the city of Chicago created the Independent Police Review Authority to try to help reform a police department that, at that point, was receiving the most complaints and accusations of police brutality and other misconduct in the nation.

Made up entirely of civilians, the board was given the task of investigating police brutality charges, with advocates arguing police were being too heavy-handed, with no fear of reprimand.

But the agency has received repeated criticism for its pace of work. In 2012 the Chicago Tribune reported that it was sometimes taking the review authority years to decide whether accusations against officers were valid or not.

In one instance, the board ruled that an officer had used excessive force when he beat a man in the head with a baton. But because the board's investigation had taken so long, the five-year statute of limitations for the incident had expired and the charges were tossed, the Chicago Tribune said.

Mr. Lynch said that the boards can also often just become extensions of the police departments themselves once political attention turns away.

Eventually, he said "people pay less attention to it; it kind of fades away. You look at it three years later, and you find sometimes the people who make them up are not all that independent. They've got some kind of ties to the prosecutor or to law enforcement."

Mr. Johnson said he rejects the notion that the events in Ferguson and New York have led to any loss of actual trust between civilians and police where there had been any.

"I think any trust that's been lost has been lost among groups or segments of an electorate that wasn't really inclined to trust the police in the first place," he said.

But Mr. Lynch said concerns over investigations into police actions aren't going away.

"The critics are more right than wrong in the sense that — again, we're speaking generally — in many jurisdictions we don't have the accountability systems that we ought to," he said. "If those checks on police power aren't there, people want to see them fixed."