



## **Civilian police oversight across the country a balancing act between investigative authority and avoiding pushback**

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Across the country, efforts to have civilians oversee police departments have jumped in the last year, sparked by a distrust of law enforcement and a desire for greater accountability.

The goals are the same in 10 cities and counties that enacted police review commissions in the last year: greater transparency, greater accountability and improved policing.

But cities differ in finding the right system, one that gives civilian boards a reasonable level of control and overcomes pushback from opponents.

In Cleveland, a charter amendment that likely will be on the November ballot would bolster the power of a Civilian Police Review Board created after Cleveland police killed 12-year-old Tamir Rice in 2014. Under the amendment, a new independent, more powerful Community Police Commission would have authority to assign investigations to the review board, have final say on discipline, set some department policy and recommend candidates for promotion to the mayor.

The push for the amendment by Citizens for a Safer Cleveland is based in the belief that a federal consent decree governing police reform in Cleveland since 2015 hasn't been able to fix all the problems.

Prior to 2020, Cleveland was one of about 200 oversight entities in place across the country, said Cameron McEllhiney, director of training and education for the National Association for Civilian Oversight of Law Enforcement.

For the last decade, the Justice Department has routinely looked to some form of civilian review as part of consent decree settlements.

Forty-nine percent of civilian oversight bodies were created after high profile incidents, according to a 2018 report by the Justice Department. In 2016, a report from the Cato Institute found 79% of Americans favored having agencies outside law enforcement investigating allegations of police misconduct.

Interest in civilian review took off following recent high-profile cases where people of color died at the hands of police, including George Floyd in May 2020.

Since June 2020, more than 130 new jurisdictions have sought advice from the association for civilian oversight, McEllhiney said.

At least 10 cities and counties approved civilian oversight measures in the November 2020 elections, according to Lawfare, a blog published in conjunction with the Brookings Institution.

Compare that to the 18,000 police agencies in the United States, according to U.S. Justice Department estimates.

[Cleveland.com/The Plain Dealer](#) took a look at existing civilian oversight boards, as Clevelanders consider the amendment.

### **How well have those agencies worked?**

Evaluating the success of civilian review is difficult in part because the boards vary so much — from boards that review police investigations only after the fact or offer recommendations about police discipline to completely independent entities that can discipline officers following their own investigation.

“The nature of civilian oversight and that no two agencies are identical makes it very hard to quantify,” McEllhiney said.

The basis, though, is to have an unbiased viewpoint.

“By acting as an independent and neutral body reviewing the work of the law enforcement agency and its sworn staff, civilian oversight of law enforcement offers a unique element of legitimacy that internal accountability and review mechanisms simply cannot,” according to a new study of which McEllhiney was a co-author.

The Justice Department in 2018 said there wasn’t enough information yet to determine how effective civilian oversight can be.

“There is little, if any, empirical research on the effectiveness of civilian oversight of the police, nor are programs subjected to any systematic evaluation,” the department said.

The department found that in communities where a form of civilian oversight exists, the rate of complaints tends to be higher – 11.9 per 100 officers vs. 6.7 in other communities — presumably because people are more willing to come forward.

McElhiney cited Los Angeles as one city that has found a successful mix. Its police commission operates independently as a board of directors over the police department. Its executive director serves as a liaison for the board with the chief. The commission’s staff also does high volumes of research, promoting transparency with reports to the public.

A Washington Post analysis of more than 30 civilian oversight panels praised Denver’s oversight office – an independent monitor who works with a civilian board. Key to its success was strong backing by politicians and strong financial support, The Post said.

### **What are the frustrations?**

In many communities, civilian oversight was hamstrung by limits on the reviewing agency’s power.

Frequently boards can only recommend disciplinary action to a police chief or a safety director. That is the case in Cleveland now.

And those recommendations are just that – recommendations.

In Seattle, for example, that city’s Community Police Commission recently protested when the police chief overturned recommendations of discipline for how officers handled protests in 2020.

The chief’s decision, the commission said, “denies justice to thousands of Black Lives Matter protesters who marched against police brutality only to be met by indiscriminate police violence.”

The chief, who has the power to disregard the commission’s recommendations, defended his decision saying it was grounded in “fundamental fairness.”

As citizen oversight evolves, communities are identifying best practices and applying them elsewhere, McElhiney said. But establishing a system that puts teeth behind an oversight board’s findings can be difficult.

“It’s often a fairly contentious conversation at the least when you’re talking about taking authority from an individual,” McElhiney said. “It’s a process and it’s part of a larger process of reform that requires people to work together.”

Cleveland’s plan would dramatically shift the balance of power. Under the current system, the civilian board makes recommendations for the chief of police to consider. The new review board

would be able to order discipline, which the chief would have to carry out unless it is shown to be improper by clear and convincing evidence.

But that shift in power – moving executive authority into the hands of an appointed commission — is precisely why several candidates for Cleveland mayor – Basheer Jones, Kevin Kelley, Dennis Kucinich and Sandra Williams – said they were opposed to the charter amendment.

### **How have civilian boards been received?**

Oversight agencies often have been met with pushback, and at times communities have been frustrated when desired results aren't achieved, according to the analysis by The Washington Post. It looked at more than 30 civilian oversight panels.

Lawsuits and unfair labor practice complaints have been used by police unions to try and derail civilian oversight efforts in places like Portland, Oregon, Albuquerque, New Mexico and Newark, New Jersey.

In other cities, such as New Bedford, Massachusetts, and Urbana, Illinois, police unions secured language in their contracts to block civilian boards or prevent them from investigating complaints against officers.

Police have argued that civilians lack the expertise to handle investigations, and that internal investigative units are better suited to do the job.

The leader of the national Fraternal Order of Police, Jim Pasco, likened it to a plumber being asked to investigate a plane crash. No matter how skilled the plumber is, that doesn't mean the expertise is there to determine the cause of a crash, he told the Post.

### **How could it work in Cleveland?**

The proposal from Citizens For A Safer Cleveland drew on ideas from Seattle and from Los Angeles.

Cleveland's Civilian Police Review Board would function like Seattle's, where the community police commission staff investigates complaints against officers.

That independent commission is akin to Los Angeles' police commission, which was created in the 1920s. Reforms were recommended following the Rodney King beatings in the 1990s and an inquiry of the department by the Christopher Commission, headed by future Secretary of State Warren Christopher. Among those was the creation of an inspector general post.

The police department handles misconduct allegations, reporting its findings to the independent commission.

If Cleveland adopts the charter amendment, it will require a culture change before its effectiveness can be gauged, said Subodh Chandra, a civil rights attorney who drafted the language.

“It will take a new generation of officers who are committed to constitutional policing,” Chandra said. The police chief and safety director will adjust to meet the demands of the new system, he said. The question is how well the rank and file will accept change.