

# GOVERNING

THE STATES AND LOCALITIES

## Civilian Oversight of Police Appeals to Many. But Is It Always Effective?

Natalie Delgadillo

May 25, 2017

Last week, voters in Los Angeles passed a measure widely condemned by Black Lives Matter, the ACLU of Southern California and other activist groups in favor of police accountability and civilian oversight.

On its face, that seems strange: The measure increases citizen oversight of the Los Angeles Police Department by allowing for the creation of an all-civilian disciplinary review board. (Currently, there's only one review board, made up of one civilian and two high-ranking LAPD officers.) But activists assert that the law, called Charter Amendment C, will actually end up favoring officers accused of wrongdoing.

“This was a deceptive measure,” says Peter Bibring, director of police practices for the ACLU of Southern California. “Most people thought this was about putting civilians in a position to hold officers accountable, and that’s not what it is.”

For one thing, the measure allows officers accused of misconduct to choose whether their case will be reviewed by the partial- or all-civilian board. Critics warn that giving cops the option to choose means they'll inevitably go before whichever board is most likely to be more lenient.

L.A. isn't the only city struggling to figure out how to keep cops accountable. Localities all over the country are wrestling with how best to formulate disciplinary review boards and how civilians might fit into that equation.

Of the 18,000 police departments in the country, only the large ones have any form of oversight, and only about 200 take the form of civilian review boards, says Samuel Walker, author of *Police Accountability: The Role of Citizen Oversight*. Every board has its own specific set of rules, responsibilities and procedures, but Walker says they often lack effectiveness and authority.

“The idea of civilian review always sounds appealing because it has this connotation of democratic governance,” says Tim Lynch, director of the libertarian Cato Institute’s Project on Criminal Justice. “But when you look into the way it actually works, it can be ineffective as far as serious accountability for police departments.”

Lynch has carried out surveys of civilian review boards across the country and found them to be vulnerable to political manipulations, inadequate funding and staffing, slow-moving investigations and a lack of authority or jurisdiction to meaningfully investigate complaints.

### **L.A. as a Case Study**

In Los Angeles, opponents of the new law argue that it's rife with problems, some of which are particular to the city and some of which are common among civilian boards generally.

For one, city reports show that civilians on L.A.'s disciplinary review board have consistently been more lenient to officers than the high-ranking police personnel. Bibring speculates that may be because all civilians on the board are required to have extensive experience as lawyers or mediators, effectively shutting out huge portions of the community.

“These members don’t represent the diversity of L.A. and especially not the communities that are being affected by police violence,” Bibring says.

Cato's Lynch says requirements for civilian membership throughout the country tend to produce boards biased in favor of officers.

“[The citizens on these boards] are sometimes required to have a law enforcement background, or they have connections of some kind with law enforcement,” he says. “They’re often not your typical business owner, what we would think of as people from the community.”

For its part, the L.A. police union, which heavily backed the measure, says that Charter Amendment C is a way to fix a broken disciplinary system. They assert that officers on the current review board feel pressure to follow Chief Charlie Beck’s recommendations for discipline, making for an inherently unfair hearing. At least three officers have sued the department alleging retaliation for failing to heed Beck's recommendation to terminate an officer during a disciplinary hearing.

But Bibring isn't buying it. He says the L.A. measure wasn't crafted in concert with the activist organizations that have been pushing for reform. Opponents of the measure have excoriated it as a “backroom deal” between city hall and the police union, trotted out at the last second during an election sure to have low turnout.

Across the country, Lynch says civilian boards often lack the resources, power or jurisdiction to effectively oversee cases. Often, they carry out reviews or investigations only with the information provided to them by internal affairs (as happens in Los Angeles). That can be a problem if internal affairs chooses not to take on a large number of cases. Even where a board does have jurisdiction to dig into cases themselves, Lynch says it often doesn't have the money to do much. And in most places, including L.A., civilian review boards can't impose discipline on their own.

"I think the evidence is thin that these review boards are an effective check on police departments," Lynch says.

San Francisco's citizen-led Department of Police Accountability, which investigates complaints against officers, is a perfect example of a citizen oversight initiative that got stalled by several of the problems Lynch points to. A lack of funding has created unsustainable caseloads for investigators at the office, which has led to delayed investigations into citizen complaints. Sometimes the delays were so severe that prosecutions were at risk since authorities only have 12 months to press charges after receiving a complaint.

San Francisco isn't alone. *Governing* has reported on cities like Seattle that instituted civilian-led investigation units only to come under federal investigation for police abuses a few years later.

## **So What Does Effective Civilian Oversight Look Like?**

Experts vary in their ideas about the best way to oversee a police department.

Walker advocates against the concept of a civilian review board altogether. In his view, the best way to conduct investigations and discipline police is within the department: Everything should go straight from internal affairs to the chief, who determines discipline, and all appeals should be handled by an independent board or arbitrator.

In Walker's ideal model, citizen oversight would take the form of an inspector general or police auditor who could oversee internal affairs' investigations and have access to the kind of information the public can't see. This person would be able to look for patterns of discrimination, weak disciplinary practices, evidence of retaliation and stalled investigations. The evidence they gather could then be brought to the police commission, the civilian body generally charged with overseeing the police department.

“The important thing is the actual investigation,” Walker says. “Finding out: Did internal affairs make an effort to gather witnesses to this incident? Did they review medical evidence? Was everything handled in a timely fashion? That’s what an inspector general can figure out.”

Processes like this exist already in a few places, though Walker says many of them aren't looking with sufficient depth at problematic patterns nor are they following up on recommendations.

He points to Denver’s Independent Monitor as a particularly good example of the auditor model. The monitor's public reports available online, in Walker's opinion, display an office dedicated to rooting out problems and consistently following up on its recommendations to ensure changes are made.

Seattle is another recent standout, despite the problems it's had in the past. Just this week, it created its own Inspector General's office, becoming the only city with three separate oversight offices for its police department. Its Office of Police Accountability investigates citizen complaints, its inspector general investigates police department policies and practices and the Community Police Commission (which has a fairly wide membership from the community, according to Walker) oversees everything else.

For his part, Lynch has two core recommendations for departments looking to improve citizen oversight: get rid of “special rules” protecting police officers and increase transparency of an officer’s disciplinary proceedings and history. In many localities, he says, a police officer doesn’t have to sit down with internal affairs for five to 10 days after the incident that’s being investigated.

“That’s a special protection,” Lynch says. “If [the locality] is serious about police accountability, they should be looking for these things and doing away with them.”

What’s more, Lynch says, “whether it’s internal affairs or an inspector general or a civilian review board,” everything about the investigative and disciplinary process should be as transparent as possible: Officers should be named, and information about any past misconduct should be available to the public, he says. Right now, 38 states limit or entirely prohibit access to police officers' disciplinary records. Laws on the books in California, Delaware and New York specifically make all officers' personnel files confidential.

Bibring of the ACLU of Southern California coincides on several of these points, particularly on the count of transparency.

“A system like [the one Walker describes] could work if the chief was accountable not just to the police commission, but to the public,” he says. “That would require that the chief’s disciplinary

decisions and investigations be made public. In a system where it's secret, it's impossible to hold police accountable.”