

“Social justice should be the underlying goal of all humanity.”
-Alan V. Lowenstein, Institute Founder



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TESTIMONY OF YANNICK WOOD
NEW JERSEY INSTITUTE FOR SOCIAL JUSTICE
IN SUPPORT OF A1515
NEW JERSEY ASSEMBLY COMMUNITY DEVELOPMENT
AND AFFAIRS COMMITTEE
DECEMBER 11, 2023

Chair Sumter and Vice-Chair Verrelli and members of the Assembly Community Development and Affairs Committee:

Thank you for the opportunity to present this testimony in support of A1515, a bill that will grant select municipalities the opportunity to create civilian review boards (CRBs) with investigatory powers.

My name is Yannick Wood and I am the Director of the Criminal Justice Reform Program at the New Jersey Institute for Social Justice (the “Institute”). The Institute’s advocacy empowers people of color by building reparative systems that create wealth, transform justice, and harness democratic power—from the ground up—in New Jersey. I am also a former prosecutor in New York City, which has had an independent Civilian Complaint Review Board for 30 years.

Introduction

For more than 50 years going back to the Newark Rebellion, which was sparked by police violence against a Black cab driver, residents have advocated for a strong CRB to help build a system of accountability into policing.

In 2016, in response to that advocacy, the city of Newark entered into a consent decree with the Department of Justice to help finally bring about a transformation in Newark’s police division. An Independent Monitoring Team, on which the Institute serves as a subject matter expert, has overseen the consent decree, which mandated that, among other things, Newark establish a CRB.¹

Shortly after the consent decree was entered, Newark created a CRB with investigatory powers.² But those powers were soon stripped away by a state supreme court ruling.³

The recent tragic police killings of Najee Seabrooks in Paterson and Andrew Washington in Jersey City make clear that this is an urgent time to pass legislation providing for strong CRBs.

I urge this committee to release A1515 to restore necessary investigatory powers back to CRBs and continue the important work in Newark—and beyond it—to help finally build a system of accountability into policing. Even as I offer testimony in support of A1515, I also offer recommendations about how to strengthen it in the final section of my testimony.

Why Strong CRBs are Necessary

New Jersey needs CRBs with investigatory powers for the following reasons:

CRBs independently hold police accountable.

Firstly, CRBs are led by members of the public and are not within the internal chain of command of the local police. This makes it more likely that their investigations will “follow the evidence” and not succumb to any pressure from police leadership.

Secondly, CRBs are professionalized. Members are appointed by the executives of municipalities and have relevant training or experience.

Thirdly, CRBs with investigatory powers – namely the ability to subpoena witnesses and documents and to conduct investigations concurrently with Internal Affairs – can ensure that law enforcement witnesses will provide accurate testimony to CRB investigators. The ability to compel the production of witnesses and documents is a must for accountability. Additionally, the ability to launch an investigation without delay will ensure that the memories of witnesses do not fade and that evidence is not lost. In the event that a complaint is concurrently investigated and supported by evidence, recommendations for discipline can be timely given to the police chief for adequate consideration. Otherwise, an internal investigation that clears an officer could prevent the objective consideration of a CRB finding of responsibility. New Jersey’s Supreme Court has already ruled that municipalities themselves cannot grant CRBs with subpoena power⁴ nor run concurrent investigations.⁵ Instead, this must be through an act of this legislature.⁶ A1515 will grant CRBs subpoena power to hold police accountable.

All of these attributes work together to hold police accountable. It is no wonder that the United States Department of Justice (USDOJ) after an extensive “patterns and practice investigation” of police misconduct and consent decree in Newark required the city to adopt independent civilian oversight.⁷ More recently, after an investigation of the troubled Louisville Police Department, USDOJ recommended that they adopt independent civilian oversight.⁸

Civilian Review Boards (CRBs) have been used for decades across the country to bring citizen-led police accountability.

CRBs are not novel creations. In fact, they have been used across the country to ensure police accountability for decades. Washington D.C., for example, has had a CRB since 1948.⁹ Berkley, California established one in 1973.¹⁰ Across the Hudson River, in New York City, a CRB was established in 1993.¹¹ Newark and several other New Jersey municipalities¹² have established CRBs.

New York City's CRB, known as the Civilian Complaint Review Board, conducts independent investigations of complaints of law enforcement misconduct ranging from discourtesy to excessive use of force.¹³ As a former prosecutor in that city, I had cases with police officer witnesses who have had Civilian Complaint Review Board complaints. I can tell you that not all complaints are equal – some complaints are substantiated and others are not. However, every complaint is investigated. The power to do these investigations is what is necessary for police accountability. Furthermore, I routinely found it helpful to my cases to have access to these complaints to get a fuller picture of the police officer witness' conduct.

CRBs are an important expression of our democracy.

CRBs are an important expression of our democracy for several reasons. Firstly, they are citizen centered. The members are residents of the municipality or county where the CRB is located. The members will be recommended by organizations concerned with civil rights human rights; or racial, social, or economic justice and equality.

Secondly, CRBs are elective and not mandatory. A municipality or county must choose whether they want to have a CRB. In this way, the decision to have a CRB is a “bottom-up” decision and more reflective of the will of the residents. A number of municipalities in New Jersey have already chosen to create their own CRBs.

Recommended Amendments

A1515 has the potential to empower CRBs to have all the above-mentioned attributes. However, the Institute urges this committee to make the following amendments.

A1515 needs stronger language to protect the powers that municipalities currently have to establish or maintain CRBs.

Pilot and non-pilot municipalities around the State have already established CRBs. Even without this legislation, these CRBs can operate, albeit without the investigatory powers conferred by this bill. This bill should clearly state that it will not limit these preexisting powers.

A1515 needs clearer language that states that at the conclusion of the pilot program period the investigatory powers of the pilot program will be expanded to any CRB across the state.

Currently, the bill is ambiguous about what will occur at the conclusion of the pilot program period. The bill does not explicitly state whether the investigatory powers of the pilot program will cease or continue in perpetuity for the pilot cities. Furthermore, the bill as drafted could potentially strip a CRB of subpoena power in the middle of its investigation, if it occurs at the conclusion of the pilot.

CRBs with investigatory power are absolutely necessary for police accountability. After the pilot is concluded, and regardless of the findings in the Commissioner of the Department of Law and Public Safety's report,¹⁴ these powers should be given to any CRB across the state. Every municipality should be entitled to the police accountability afforded by CRBs.

A1515 needs language guaranteeing that pilot municipalities that already have review boards can participate without having to pass a new ordinance.

There should language stating that "a pilot municipality which has established a municipal civilian review board prior to the passage of this act may participate in the pilot program without the passage of further ordinances." Although it could be inferred that existing CRBs may participate,¹⁵ language in the bill states that "a pilot municipality may, by ordinance establish"¹⁶ implying that, after the bill is in effect, the pilot municipality would need an ordinance to have the rights granted in the chapter.

A1515's amendments need to provide for county CRBs.

The ability to create a county CRB was removed by amendments. If after the pilot concludes, the bill is expanded statewide, then the language authorizing county CRBs in the original draft should be included. A city like Camden, for example, uses county police as local police. Without the inclusion of a county CRB, there would not be independent civilian oversight of police within Camden city.

A comma needs to be added between the word "authority" and "offensive language" in §5(b).

There appears to be a typo in §5(b).¹⁷ There needs to be a comma between "abuse of authority" and "offensive language" to separate these two distinct types of police misconduct.

A1515 should permit a CRB investigation to run concurrently with an Internal Affairs investigation.

The bill currently delays a CRB investigation by up to 120 days if Internal Affairs decides to investigate an incident.¹⁸ There should be no waiting period. As a former prosecutor, I can definitively state that the passage of time does not help investigations. Recollections of incidents become less defined and evidence is more likely to become lost. It makes it more likely that

Internal Affairs will reach a decision before a CRB does. It also becomes less likely that the department will revisit its discipline decisions if the delayed CRB recommends something different.

A1515 should have an effective date and the date should be immediate.

Currently, the bill does not have a date indicating when it will go into effect. An effective date is a requirement to trigger the obligations of the Attorney General to develop training courses and a civilian complaint system¹⁹ which are critical to the success of the pilot. The Institute recommends that the bill go into effect immediately. Police accountability cannot wait.

A1515 should have an appropriation for the CRB training program.

The amended language removes an appropriation for the Office of the Attorney General (OAG) to implement a CRB training program. The bill should have an appropriation because the OAG might not conduct the training without the appropriation. And, without the training, the members of pilot CRBs established after January 1, 2020 will not be able to operate functionally halting the pilot program.

Conclusion

Strong CRBs are an answer to decades of advocacy. They will empower communities with necessary tools to achieve police accountability. With the Institute’s proposed amendments and those of our partner organizations, A1515 will empower CRBs. Thank you for considering our testimony.

¹ CITY OF NEWARK CONSENT DECREE ¶ 13, <https://www.justice.gov/opa/file/836901/download>.

² Newark, N.J., Ord. 6PSF-B (Mar. 16, 2016), <https://ecode360.com/36621422>

³ *Fraternal Ord. of Police, Newark Lodge No. 12 v. City of Newark*, 244 N.J. 75, 111, 236 A.3d 965, 985 (2020)

⁴ *Id.* at 111 (“There is no inherent authority for the Council to delegate its subpoena power to a non-legislative body of its creation”).

⁵ *Id.* at 108 (“Unless legislative change occurs, we are constrained to preclude the CCRB from employing its delegated authority to conduct a complaint-based investigation in any matter when there is an IA investigation. We accordingly hold that the CCRB’s authority to conduct concurrent investigations is invalid”).

⁶ *Id.* at 113 (“We appreciate that Newark values having a civilian body participating in the oversight of the police function. But the Legislature would have to act in order for the City to have the ability to confer subpoena power on its CCRB”).

⁷ U.S. DEPT JUST., *supra* note 1 at ¶ 13.

⁸ INVESTIGATION OF THE LOUISVILLE METRO POLICE DEPARTMENT AND LOUISVILLE METRO GOVERNMENT, U.S. DEPT. JUST. 85 (Mar. 8, 2023) https://www.justice.gov/d9/press-releases/attachments/2023/03/08/2023.3.8_Impd_findings_report_0.pdf.

⁹ MICHAEL VITOROULIS, CAMERON MCELHINEY & LIANA PEREZ, THE EVOLUTION AND GROWTH OF CIVILIAN OVERSIGHT, CMTY. ORIENTED POLICING SERV. U.S. DEPT. JUST. 4 (2021) <https://portal.cops.usdoj.gov/resourcecenter/RIC/Publications/cops-w0951-pub.pdf>.

¹⁰ *Id.*

¹¹ *History*, N.Y.C. CIVILIAN COMPLAINT REV. BD., <https://www.nyc.gov/site/ccrb/about/history.page> (last visited Dec. 12, 2023).

¹² CITY NEWARK *supra* note 2 (Creating City of Newark’s Civilian Review Board); Maplewood, N.J., Ord. 2901-18 (Apr. 17, 2018), <https://ecode360.com/33457911> (creating the Township of Maplewood’s Community Board on Police); West Orange, N.J., Ord 2654-21 (Sept. 14, 2021), <https://www.westorange.org/DocumentCenter/View/11461/CIVILIAN-COMPLAINT-REVIEW-BOARD-CCRBCreation-and-Composition---Appointment-of-Members-Terms-and-Meetings-Responsibilities> (Creating the Township of West Orange’s Civilian Complaint Review Board).

¹³ N.Y.C., N.Y., City Charter 18-A (Dec. 2023)
<https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCcharter/0-0-0-1641>.

¹⁴ Proposed Amendment §2(b)(2), Asm. B. No. 1515, 220th Leg. (N.J. 2022) (This committee is considering unpublished proposed amendments to Bill A1515 and this citation is referring to §2(b)(2) of those unpublished proposed amendments).

¹⁵ *Id* at proposed amendment §3(g)(2) (Refers to CRB in existence prior to January 1, 2020 can investigate without new training).

¹⁶ *Id* at proposed amendment §3.

¹⁷ *Id* at proposed amendment §5(b).

¹⁸ *Id* at proposed amendment §4(d)(1).

¹⁹ *Id* at proposed amendment §6.