

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 399

Short Title: Asheville/Law Enforcemt Civilian Review Board. (Local)

Sponsors: Representatives Fisher, Ager, and Turner (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Local Government, if favorable, Judiciary 1, if favorable, Rules, Calendar, and
Operations of the House

March 25, 2021

1 A BILL TO BE ENTITLED
2 AN ACT AUTHORIZING THE CITY OF ASHEVILLE TO ESTABLISH A LAW
3 ENFORCEMENT CIVILIAN OVERSIGHT BOARD.

4 The General Assembly of North Carolina enacts:

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

7 **"§ 160A-289.3. Law enforcement civilian oversight board.**

8 (a) A city may, by ordinance, establish a law enforcement civilian oversight board
9 (hereinafter "board") to review allegations of excessive force by law enforcement officers. The
10 ordinance shall comply with the provisions of this section and shall contain, at a minimum, all of
11 the following:

12 (1) The composition of the board, which shall be no less than five and no more
13 than seven members.

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

16 a. No member may be employed by the city, or have been employed by
17 the city, in the prior seven years.

18 b. Each member shall be a qualified voter of the city.

19 c. Each member shall attest that the member has completed at least one
20 ride-along with a law enforcement officer, employed by the city, in the
21 12 months prior to the member's appointment to the board, or the
22 member will complete a ride-along with a law enforcement officer,
23 employed by the city, within 12 months of the member's appointment
24 to the board. The provisions of this sub-subdivision may be extended
25 by the governing body of the city for an additional six months for good
26 cause. For purposes of this section, the term "law enforcement officer"
27 means an employee actively serving in a position with assigned
28 primary duties and responsibilities involving the prevention and
29 detection of crime or the general enforcement of the criminal laws of
30 the State and who possesses the power of arrest by virtue of an oath
31 administered under the authority of the State.

32 d. If the city's law enforcement agency conducts a citizen academy, each
33 member shall attest that the member has completed the academy or
34 will attend the next scheduled academy.



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- 1 e. No person is eligible to serve as a member of the board if the person
2 has been convicted of a felony against this State, the United States, or
3 another state, or the person has been convicted of a Class A1
4 misdemeanor in this State in the prior seven years.
- 5 f. All applicants seeking appointment to the board shall submit to a
6 criminal background check to be reviewed by the governing body prior
7 to appointment.
- 8 g. No member may be an immediate family member of a law
9 enforcement officer employed by the city. For purposes of this
10 sub-subdivision, the term "immediate family" has the same meaning
11 as in G.S. 126-8.3(a).
- 12 (3) The procedure for appointing members to the board, which shall include
13 application to the city and approval by a majority vote of the governing body.
- 14 (4) The manner in which hearings of the board shall be conducted.
- 15 (b) Prior to appointment to the board, all members shall meet all of the qualifications
16 provided in subdivision (2) of subsection (a) of this section and any additional qualifications
17 established by the governing body in the ordinance adopted pursuant to this section. Members
18 shall serve for a term of two years, but no member shall serve two consecutive terms. Vacancies
19 on the board shall be filled in accordance with the ordinance adopted pursuant to this section.
20 Members may be removed at the will of the governing body. Upon accepting appointment to the
21 board, each member shall sign a confidentiality agreement. Failure to sign, or breach of, the
22 confidentiality agreement shall constitute a Class 2 misdemeanor punishable by a fine up to one
23 thousand dollars (\$1,000) and result in automatic removal from the board upon conviction.
24 Members shall serve without compensation, but may receive reimbursement for expenses in
25 accordance with any applicable city ordinance or policy. At the first meeting of the board, and
26 every two years thereafter, the board shall select a chair from amongst its membership. Meetings
27 shall be called by the chair as necessary.
- 28 (c) The board shall have only the following powers and duties:
- 29 (1) To conduct confidential reviews of law enforcement agency investigations
30 into allegations of excessive force by law enforcement officers. The
31 presentation of the investigation shall be by law enforcement agency
32 personnel charged with investigating the allegations.
- 33 (2) To make findings and recommendations to be considered by the head of the
34 law enforcement agency prior to the agency head's final decision as to whether
35 a law enforcement officer employed excessive force in a given case. The
36 findings and recommendations shall include the board's opinion as to whether
37 the law enforcement officer's actions complied with or violated the
38 department's policies regarding the use of force, as well as recommended
39 disciplinary action in appropriate cases.
- 40 (d) Notwithstanding the provisions of G.S. 160A-168 and G.S. 132-1.4A, but subject to
41 any federal law restricting access, the chief of police shall make available to the board the
42 personnel file of the law enforcement officer whose conduct is subject to review by the board,
43 any relevant body camera footage, and any other material deemed necessary by the chief of police
44 for the board to adequately complete its review. The board shall maintain the confidentiality of
45 any information provided to it under this subsection, and the failure to do so shall be punishable
46 as provided in subsection (b) of this section.
- 47 (e) Meetings of the board shall be confidential and are not subject to the open meetings
48 requirements of Article 33C of Chapter 143 of the General Statutes. The only persons who may
49 be present during board meetings are board members, personnel charged with investigating an
50 allegation of misconduct, and an advisor, appointed by the chief of police, to provide the board

1 with information and advice regarding law enforcement best practices. The advisor shall serve at
2 the pleasure of the chief of police and is not required to be a city employee.

3 (f) A law enforcement officer alleged to have employed excessive force may submit a
4 written statement to be considered by the board prior to the board issuing written findings or
5 recommendations concerning the officer.

6 (g) The board shall not:

7 (1) Possess the power of subpoena.

8 (2) Conduct reviews of matters other than those specifically authorized by
9 subsection (c) of this section.

10 (3) Call or interview witnesses, except law enforcement agency personnel
11 charged with investigating allegations of excessive force and advisors
12 appointed by the chief of police and tasked with advising the board on law
13 enforcement policies, practices, and procedures.

14 (h) Any written findings or recommendations made by the board concerning a law
15 enforcement officer's conduct shall be considered a personnel record and shall be confidential
16 information contained in a city employee's personnel file which shall not be disclosed except as
17 provided in G.S. 160A-168.

18 (i) The board shall report semiannually and annually on its actions in the prior year to
19 the chief of police and the governing body. The information to be contained in the reports shall
20 be prescribed by ordinance. Reports made by the board pursuant to this subsection shall be a
21 public record.

22 (j) No State funds may be used to establish or operate a board established pursuant to
23 this section.

24 (k) To the extent any provisions of a local act are inconsistent with the provisions of this
25 section, the provisions of this section shall control."

26 **SECTION 2.** This act applies to the City of Asheville only.

27 **SECTION 3.** This act is effective when it becomes law.