

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2767

FISCAL
NOTE

BY DELEGATES WALKER AND FLEISCHAUER

[Introduced February 25, 2021; Referred to the
Committee on Political Subdivisions then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §29-33-1, §29-33-2, §29-33-3, §29-33-4, §29-33-5, §29-33-6, §29-33-7, §29-
 3 33-8, §29-33-9, §29-33-10, §29-33-11, §29-33-12, and §29-33-13, all relating to creating
 4 a law-enforcement transparency board; providing structure, and selection process for
 5 members; providing definitions; providing that the Attorney General serve as
 6 administrative head of the board and describing powers and duties; required meetings,
 7 reports, and board powers, duties, and authority; how board funded and staff trained;
 8 receiving complaints and investigation process; requiring law-enforcement agencies to
 9 cooperate with the board; disposition of cases; requiring board to provide findings of
 10 investigations to appropriate oversight authorities; and disciplinary oversight.

Be it enacted by the Legislature of West Virginia:

ARTICLE 33. LAW-ENFORCEMENT TRANSPARENCY BOARD.

§29-33-1. Establishment of Law-Enforcement Board.

1 There is hereby created a Law-Enforcement Transparency Board to address and
 2 participate in the resolution of complaints filed by members of the public against law-enforcement
 3 officers. Complaints against law-enforcement officers shall be investigated and discipline, if any,
 4 shall be recommended to the appropriate oversight authority.

§29-33-2. Definitions.

1 “Appropriate oversight authority or oversight authority” means the political office holder,
 2 executive agency, or other entity that has the authority to oversee, investigate, and implement
 3 disciplinary measures for any given law-enforcement agency under relevant laws and collective
 4 bargaining agreements.

5 “Internal Investigation” means any investigation of a law-enforcement officer or agency by
 6 the same agency or officers of the same agency.

7 “Law-Enforcement Agency” means any municipal police department, county sheriff office,
 8 State Police, Capitol Police, or municipal, county, or state entity with the authority to execute

9 warrants and make arrests.

10 “Law-enforcement officer” means any officer or employee authorized with police powers
11 within a municipal police department, county sheriff office, State Police, Capitol Police, or any
12 other municipal, county, or state entity with the authority to execute warrants and make arrests.

§29-33-3. Board structure; members; selection process.

1 (a) The Law-Enforcement Transparency Board shall consist of 15 members of the public,
2 all appointed by the Governor with advice and consent of the West Virginia Senate.

3 (1) One shall be the Attorney General, or his or her designee;

4 (2) Three shall be elected members of the House of Delegates or their designees, who
5 shall be nominated by the Governor;

6 (3) Three shall be elected members of the Senate or their designees, who shall be
7 nominated by the Governor;

8 (4) The Governor shall accept nominations from the following organizations, and nominate
9 one from each of the organizations, which individuals shall be members or representatives in
10 good standing with said organizations, but may not be staff or board members of those
11 organizations:

12 (i) American Civil Liberties Union (“ACLU”) – West Virginia,

13 (ii) National Association for the Advancement of Colored People (“NAACP”) – West
14 Virginia,

15 (iii) Call to Action for Racial Equality (CARE),

16 (iv) American Friends Service Committee (AFSC) – West Virginia,

17 (v) Representative of the clergy (referring to any person who provides moral, spiritual, or
18 philosophical guidance as a profession),

19 (vi) West Virginia State Bar Association,

20 (vii) National Association of Social Workers (NASW) – West Virginia, and

21 (viii) Fraternal Order of Police (FOP): *Provided*, That the representative from the FOP may

22 not be an active law-enforcement officer.

23 (b) No member of the board, excluding the Attorney General, or his or her designee, and
24 the nominee from the FOP, may be former law-enforcement.

25 (c) In selecting representatives to serve on the board, nominators are encouraged to
26 consider potential members' professional experience in law, civil rights, or related fields.
27 Nominators shall provide the Governor with the resumes and any other submissions that establish
28 the nominee's qualifications to be appointed to the board and that information shall be provided
29 to the Senate for its review and consideration. If any of the organizations, for any reason, declines
30 to recommend a member or any one or more of the organizations cease to exist, the Governor
31 may designate another organization which may in turn recommend a representative in good
32 standing for membership which appointment shall be with the advice and consent of the Senate.
33 The Governor may remove an organization and its representative for cause and designate
34 another organization which can then recommend a representative in good standing for
35 membership on the board which appointment shall be with the advice and consent of the Senate.
36 Any member of the clergy appointed to the board shall represent the public interest and may not
37 render decisions based on any personal religious belief.

38 (d) The Governor shall designate one of the members to be the chairperson. The Attorney
39 General, or a designee, or the representative from the FOP may not serve as chairperson of the
40 board. The term of the members shall be three years, except the delegate members who shall be
41 appointed for terms of two years, and the Attorney General who shall be a permanent appointment
42 to the board.

43 (e) If there is a vacancy on the board during the term of office of a member, by reason of
44 removal, death, resignation, or otherwise, a successor shall be chosen in the same manner as
45 the original appointment. A member appointed to fill a vacancy shall serve for the balance of the
46 unexpired term.

§29-33-4. Duties of the Attorney General or designee.

1 (a) The Attorney General, or a designee, shall:

2 (1) Serve as the administrative head of the board, assist the board with supervision of
3 civilian employees, supervise intake and communications on behalf of the board with
4 complainants and victims, as well as serve as a voting member;

5 (2) Provide such assistance as the board needs to receive complaints, perform
6 investigations, hire and assign civilian staff, and ensure the training of board members and staff;

7 (3) Review completed investigations, sit in on ongoing cases and may ask questions and
8 may make policy recommendations to the board as a whole; and

9 (4) Also serve in an audit role, reporting on the fairness of internal investigations as
10 opposed to the behavior of individual officers.

11 (b) Any civilian staff used to assist the Attorney General, or designee, in their audit role,
12 may not engage in investigations.

§29-33-5. Meetings of the board; reports.

1 (a) The full board shall meet at least one time each month, at which meeting it shall
2 consider cases referred to it and conduct any other business.

3 (b) If a case has been referred to the board, the board may take such action as it considers
4 appropriate, including, but not limited to, making its own findings and recommendations,
5 remanding the case to a referring panel for further consideration or action, and remanding the
6 case for further investigation.

7 (c) If a board member has a personal, business or other relationship or association with a
8 party to or a witness in a case before a panel to which such member has been assigned, the
9 member shall disclose this situation to the chair, and shall request that the case be transferred to
10 another panel. If a board member has such a relationship in a case before the full board, the
11 member shall recuse themselves from deliberations or action in connection with that case.

12 (d) Board members must be present at a meeting of the board or a panel in person or,
13 subject to such limitations as the board may by resolution from time to time determine, by

14 videoconference in order to register their votes.

15 (e) The board shall hold meetings open to the public no less than once every other month.

16 The board shall provide a public report on board activities, at these meetings, without disclosing
17 personally identifiable information about a complainant prior to a board hearing. This public report
18 shall include, but is not limited to:

19 (1) The disposition of cases referred to it by board staff in the prior month;

20 (2) The disposition of cases in which the board recommended discipline to the appropriate
21 oversight authority, and what discipline, if any, the oversight authority issued to the officer found
22 to have committed misconduct in the prior month;

23 (3) The number of complaints received in the prior month, the type of misconduct alleged
24 in those complaints, and the investigatory status of those complaints;

25 (4) Any practices or policy investigations ongoing or completed, as well as any policy
26 recommendations made pursuant to the board's authority to investigate practices or patterns of
27 behavior;

28 (5). Efforts to promote the board's function, availability, and processes to the public during
29 the prior month.

30 (f) The board may conduct public hearings related to issues of public concern with any
31 law-enforcement agency policies, patterns, or practices. The board may choose to summon the
32 employees of the law-enforcement agency to testify at such a hearing.

33 (g) The board shall include a public comment period, at each public meeting, during which
34 members of the public may address the board on issues germane to the board's jurisdiction.

35 (h) The minutes of each public board meeting shall be posted on the board's website within
36 a reasonable time following the meeting.

37 (i) The board shall publish on its public website on a quarterly basis:

38 (1) The number of complaints it receives;

39 (2) The race, ethnicity, gender, and age of the complainant;

40 (3) The county and municipality in which the misconduct is alleged to have taken place;

41 (4) The basic facts of the complaints (with personally identifiable information redacted);

42 (5) The disposition of each complaint;

43 (6) The recommended discipline, if any, for each complaint;

44 (7) The discipline issued by the appropriate oversight authority, if any, for each complaint;

45 (8) Any other information the board shall determine is relevant to carry out the board's

46 duties and responsibilities.

47 (i) The board shall request from all law-enforcement agencies and publish on an annual

48 basis:

49 (1) The number of stops made during the previous year, including data disaggregated by:

50 (i) The date, time, location and law-enforcement agency of the pedestrian or vehicle stop;

51 (ii) The perceived race, ethnicity, gender, and age of the person stopped, and whether the

52 person stopped was of limited English proficiency, and if so, whether interpretive services were

53 offered: *Provided*, That the identification of these characteristics shall be based on the

54 observations and perceptions of the officer making the stop and the information may not be

55 requested of the person stopped, unless otherwise required by law;

56 (iii) An explanation of the reason for the stop;

57 (iv) Whether a frisk of the individual took place as a result of the stop, and an explanation

58 of the legal justification for the frisk;

59 (v) Whether a search (beyond a frisk) of the individual or, if applicable, the vehicle, took

60 place as a result of the stop, and an explanation of the legal justification for the search;

61 (vi) The scope of any search conducted;

62 (vii) Whether any contraband was discovered or seized in the course of the search, and if

63 so, the nature of the contraband;

64 (viii) The disposition of the stop, such as a warning, a summons, or an arrest;

65 (ix) If a summons was issued or an arrest made, the violations, offenses, or crimes

66 charged (including criminal code section or other section of law); and

67 (x) Whether any force was used during the stop, frisk or search, and the type of force
68 used;

69 (2) The number of uses of force incidents during the previous year, including data
70 disaggregated by:

71 (i) The race, gender, ethnicity, and age of the civilian;

72 (ii) The type/brief description of force used;

73 (iii) The reason for use of force;

74 (iv) The civilian injuries that took place during an incident involving use of force, if any; and

75 (v) The officer injuries that took place during an incident involving use of force, if any.

76 (3) The number of arrests made during the previous year, including data disaggregated
77 by:

78 (i) The date, time, location, and police district of the arrest;

79 (ii) The race, ethnicity, gender, and age of the arrestee;

80 (iii) The offense charged (including criminal code section, or other section of law); and

81 (iv) Whether the arrest came in response to a specific report or complaint made by a
82 person to law-enforcement or 911 system.

83 (4) The amount of money expended in settlements or judgments to resolve tort, civil rights,
84 or other legal claims filed against law-enforcement agencies, as well as the basic facts associated
85 with those claims to the extent permitted by law, or not otherwise restricted from disclosure.

86 (k) The board shall publish an annual report, available on its public website, compiling the
87 aforementioned statistics, information required by §29-33-7(b), §29-33-7 (e), and §29-33-13(d) of
88 this code for each calendar year and identify any significant trends, patterns, areas of concern, or
89 areas of excellence.

§29-33-6. Budget; staffing; training.

1 (a) The Legislature shall appropriate funds from the general revenue for the operation of

2 the board.

3 (b) The board shall submit to the Legislature a proposed budget to cover initial costs and
4 expenses related to the hiring, and training of employees and board members, secure necessary
5 infrastructure and equipment, conduct a public awareness campaign, and otherwise implement
6 requirements, within 45 days of the first full sitting of the board. This allocation shall be a one-time
7 appropriation.

8 (c) The board shall submit a proposed annual operating budget and annual financial
9 statements to the Legislature during the first quarter of the year.

10 (d) The board may, within appropriations available to it, appoint and train such civilian
11 employees as are necessary to exercise its powers and fulfill its duties. Board members shall
12 receive the same training as provided to civilian employees.

13 (e) The board, and such employees as it may retain, shall obtain training necessary to
14 fulfill its responsibilities set forth herein. The training shall be predominately obtained from
15 independent, third party bodies or institutions that have experience with internal affairs and civilian
16 review investigations and audits. The board shall adopt policy as to training at the outset of its
17 operation and update the policy annually.

§29-33-7. Powers and duties of board members; staff; rules.

1 (a) The board may receive, investigate, hear, make findings, and recommend action upon
2 complaints by members of the public including, but not limited to, complaints made by other law-
3 enforcement officers or personnel, against law-enforcement officers that allege misconduct
4 involving inappropriate behavior or actions. Such behavior or action includes, but is not limited to:

5 (1) Excessive use of force;

6 (2) Abuse of authority;

7 (3) Unlawful arrest;

8 (4) Unlawful stop;

9 (5) Unlawful searches; or

10 (6) Discourtesy or use of offensive language, including, but not limited to, slurs relating to
11 race, ethnicity, religion, gender, age, sexual orientation, gender identity or expression, and
12 disability, theft, and any other categories protected under law.

13 (b) If any complaint is subject to an internal investigation or review by another law-
14 enforcement agency under the jurisdiction of the State of West Virginia, at the conclusion of the
15 investigation, the board may conduct a review of the findings, conclusions and recommendations
16 of the investigation. An annual report of the investigation reviews shall be submitted to the
17 Legislature. The board may utilize all the powers set forth in this article to carry out the
18 investigation reviews.

19 (c) The jurisdiction of the board is concurrent with that of any internal investigation to
20 investigate complaints or behavior.

21 (d) The board may consider and make recommendations to the Governor, Legislature,
22 county commissions, oversight authorities, city councils, and the public concerning policies and
23 procedures concerning the internal investigations.

24 (e) The processing and review of civilian complaints shall not be deferred because of any
25 pending or parallel disciplinary proceeding or criminal investigation, unless such request for
26 deferment is made by the office of a county prosecutor or a state or federal law-enforcement
27 agency or prosecutor or by a court order.

28 (f) The board may investigate and make recommendations regarding practices and/or
29 patterns of behavior that are problematic with regard to the interaction of any law-enforcement
30 agency with the public at large, public safety concerns, failures of communication with the public,
31 or any other area regarding police practices and policy or police-community relations.

32 (g) The findings and recommendations of the board, and the basis therefore, including
33 those that may relate to suggested general policies and procedures not specific to any particular
34 investigation or complaint shall be submitted to the political body with oversight of that particular
35 law-enforcement agency.

36 (h) The board may require the production of such records and other materials as are
37 necessary for the investigation of complaints submitted to the board, pursuant to this section
38 through the issuance of subpoenas. The board, upon a majority vote of members, may issue
39 subpoenas ad testificandum and duces tecum which may be served, to the extent permitted by
40 law.

41 (i) The board shall issue to the Legislature an annual report which shall describe its
42 activities and summarize its action.

43 (j) The board shall inform the public about the board and its duties and shall develop and
44 administer an ongoing program for the education of the public regarding the board. The board
45 shall hold public meetings and shall regularly report to the public on its activities and other policing
46 information it determines to be in the public interest.

47 (k) The board shall propose rules for legislative approval in accordance with §29A-3-1 et
48 seq. of this code necessary to accomplish the purposes of this article.

49 (1) Changes and/or amendments to the rules of procedures and/or the rules of the board
50 may be proposed by the board and shall follow the provisions of §29A-3-1 et seq. of this code.

51 (2) The rules of procedure or changes to rules of procedure shall prescribe the way
52 investigations are to be conducted and recommendations made and how a member of the public
53 is to be informed of the status of his or her complaint.

54 (3) The rules or changes to rules may provide for the establishment of subcommittees or
55 panels, which shall consist of not less than three members of the board, which shall be
56 empowered to supervise the investigation of complaints, and to hear, make findings and
57 recommend action on such complaints.

58 (4) The rules or changes to rules may provide that subcommittee or panels may not consist
59 exclusively of members holding elected office.

§29-33-8. Receiving complaints.

1 (a) The board shall develop procedures to receive complaints by mail, email, or submitted

2 in person during operating hours and develop and make available forms for filing written
3 complaints.

4 (b) The board shall accept written complaints filed with law-enforcement agencies and
5 forwarded by the law-enforcement agency and accept complaints submitted through the board's
6 website and by such other methods as the board may determine.

7 (c) Telephone complaints shall be received during normal business hours at the board
8 office: *Provided*, That the board has staff operating during normal business hours.

9 (d) Complainants may also report complaints in person at the board office during operating
10 hours: *Provided*, That the board has staff operating during normal business hours. Complaints
11 may also be filed at public locations to be designated by the board.

12 (e) The board shall schedule evening and weekend hours as it considers appropriate.

13 (f) The board shall accept complaints submitted through its voicemail system or by such
14 other methods as the board may determine.

15 (g) When the board receives a complaint about officers and matters within the board's
16 jurisdiction, the board shall notify the appropriate law-enforcement agency of the actions
17 complained of within a reasonable period after receipt of the complaint.

18 (h) The board's notice to the law-enforcement agency shall indicate that:

19 (1) The board shall contemporaneously initiate a parallel investigation of the complaint or
20 behavior with the law-enforcement agency; and/or

21 (2) The board may not investigate the complaint or behavior but shall conduct an
22 investigation review upon the law-enforcement agency's conclusion of its investigation as
23 provided for in §29-33-7(c) of this code.

24 (i) If the board receives allegations about persons or matters falling within the sole
25 jurisdiction of another agency (and not that of the board), the board or the chair shall immediately
26 refer these allegations to such other agency.

27 (j) The board shall notify a complainant by telephone or letter that the board has received

28 his/her complaint and shall identify the case number, within seven business days of the receipt of
29 a complaint.

30 (k) The board shall write to the complainant with such findings and recommendations,
31 within seven business days of sending to the appropriate oversight authority its findings and
32 recommendations in a case.

§29-33-9. Fact finding process.

1 (a) In investigating a complaint, board investigatory personnel may utilize one or more of
2 the methods set forth in this section, and any other techniques not enumerated here, as may be
3 useful in investigating.

4 (1) The board may make written or oral requests for information or documents.

5 (2) A panel established pursuant §29-33-11(b) of this code may interview the complainant,
6 the subject officer or witnesses.

7 (3) The panel may obtain records and other materials from any law-enforcement agency
8 which are necessary for the investigation of complaints submitted to the board, except such
9 records and materials that cannot be disclosed by law.

10 (4) If requests for records or other evidence are not complied with, the panel may request
11 issuance of a subpoena duces tecum or a subpoena ad testificandum. The board may issue
12 subpoenas ad testificandum and duces tecum, upon a majority vote of members of the board,
13 which may be served, to the extent permitted by law.

14 (5) The panel may make field visits for purposes such as examining the site of alleged
15 misconduct and interviewing witnesses.

16 (b) All of the foregoing, excluding requests for subpoenas, may be undertaken by board
17 investigators.

18 (c) All interviews shall follow specific rules governed by this article and procedures
19 developed by the board.

20 (1) All persons interviewed may be accompanied by up to two individuals to act as their

21 representatives, inclusive of their chosen counsel. The counsel or representatives may advise the
22 person interviewed as circumstances may warrant but may not otherwise participate in the
23 proceeding.

24 (2) The interviewer shall inform the interviewee of the name and position of the person in
25 charge of the investigation, name and position of the interviewer, the identity of all persons present
26 at the interview, whether the interviewee is a subject or witness in the investigation, the nature of
27 the complaint and information concerning all allegations, and the identity of witnesses and
28 complainants, except that addresses need not be disclosed and confidential sources need not be
29 identified unless they are witnesses to the alleged incident.

30 (3) Interviews shall be scheduled at a reasonable hour, and reasonable requests for
31 interview scheduling or rescheduling shall be accommodated. If possible, an interview with a law
32 enforcement officer shall be scheduled when the officer is on duty and during daytime hours.
33 Interviews may be conducted at the board's offices or other locations designated by the board.

34 (4) If an interviewee needs an interpreter, he or she shall advise the interviewer of that
35 need as soon as possible after being notified of the date and time of the interview. A qualified
36 interpreter shall be obtained from an official registry of interpreters or another reliable source.

37 (5) Reasonable accommodations shall be made for persons with disabilities who are
38 participating in an interview. Persons requiring such accommodations shall advise the board of
39 that need as soon as possible after being notified of the date and time of the interview.

40 (6) The interviewer shall regulate the duration of question periods with breaks for such
41 purpose as meals, personal necessity and telephone calls. The interviewer shall record all
42 recesses.

43 (7) The interviewer may not use off-the-record questions, offensive language or threats,
44 or promise of reward for answering questions.

45 (8) Interviews shall be recorded by the board. No other recordings are permitted.

46 (d) This section may not alter the rights afforded to law-enforcement officers in standing

47 orders or other rules and procedures or in collective negotiation contracts with respect to
48 interviews so as to diminish these rights if any, including, but not limited to, any existing right to
49 notice of an interview, the right to counsel, and the right not to be compelled to incriminate oneself.

50 (1) Any law-enforcement officer who is the subject of a complaint shall be given two
51 business days' notice prior to the date of an interview, to obtain and consult with representatives.

52 A law-enforcement officer who is a witness in an investigation of a complaint shall be given a
53 period of up to two business days to confer with their representatives.

54 (2) Prior to the commencement of the interviewing of a law-enforcement officer, the
55 following statement shall be read to the officer:

56 "You are being questioned as part of an official investigation of the Law-Enforcement
57 Transparency Board. You will be asked questions specifically directed and narrowly related to the
58 performance of your duties. You are entitled to all the rights and privileges guaranteed by the laws
59 of the State of West Virginia, the Constitution of this State and the Constitution of the United
60 States, including the right not to be compelled to incriminate yourself and the right to have legal
61 counsel or such other representative present at each and every stage of this investigation,
62 however that person may not unduly interfere or disrupt the proceedings".

63 (e) During the investigatory process, neither the identity of, nor personally identifiable
64 information about, complainants or witnesses may be released beyond the board staff, board
65 members, and the staff of any law-enforcement agency engaged in the specific investigation of
66 the complainant's allegation. If the complaint is substantiated and is referred to a board hearing,
67 the complainant's identity may be released in the course of any public hearing about the alleged
68 misconduct.

§29-33-10. Cooperation of law-enforcement agencies.

1 (a) All law-enforcement agencies under the jurisdiction of this article shall provide such
2 assistance as the board may reasonably request, to cooperate fully with investigations by the
3 board, and to provide to the board upon request records and other materials which are necessary

4 for the investigation of complaints submitted pursuant to this section, except those records or
5 materials that cannot be disclosed by law.

6 (b) The chiefs, sheriffs, or other authorities within each law-enforcement agency shall
7 ensure that officers and employees of that agency appear before and respond to inquiries of the
8 board and its civilian investigators, if any, in connection with the investigation of complaints.

9 (c) The board may, during an investigation, contact the law-enforcement agency to request
10 the assistance of employees of said agency in the evaluation, preparation and investigation of the
11 complaint. In such instances, the law-enforcement agency shall provide reasonable assistance to
12 the board.

13 (d) All law-enforcement agencies under the jurisdiction of the board shall provide all
14 reasonable assistance requested by the board, including training and guidance in both legal and
15 administrative matters.

16 (e) The provisions of this article may not be construed to limit or impair any other authority
17 to discipline members of any law-enforcement agency nor obviate the responsibility of any law-
18 enforcement agency to investigate citizen complaints or incidents to which they are made known,
19 and to promptly inform the board of all such complaints or incidents. The provisions of this section
20 may not be construed to limit the rights of members of any law-enforcement agency with respect
21 to disciplinary action, including, but not limited to, the right to notice and a hearing, which may be
22 established by any provision of law or otherwise.

23 (f) Nothing concerning the authority and/or process of the board may constrain or change
24 in any way the obligations of any law-enforcement agency to conduct appropriate and timely
25 investigations of law-enforcement officers.

26 (g) The provisions of this article may not be construed to prevent or hinder the investigation
27 or prosecution of any law-enforcement officer for violations of law by any court of competent
28 jurisdiction, a grand jury, county or state prosecutor, or any other authorized officer, agency or
29 body.

30 (h) The appropriate oversight authority shall retain in all respects the authority and
31 discretion to make final disciplinary determinations.

32 (i) The Attorney General shall ensure that any adverse action by any law-enforcement
33 officer or agency towards an individual which is due to an action taken to exercise their rights to
34 file a misconduct complaint, or which likely would deter an individual from exercising their rights
35 or making or supporting a complaint, is prohibited.

§29-33-11. Disposition of cases.

1 (a) The chair shall assign to a panel consisting of at least three board members, or may
2 assign to the full board for review, all cases which must be fully investigated. Panel membership
3 shall be determined by the chair, but no such panel may consist exclusively of elected officials.

4 (b) The panel or the board shall review the investigatory materials for each assigned case
5 and prepare a report of its findings and recommendations.

6 (1) The panel or the board may, if it considers appropriate, return a case to investigative
7 staff for further investigation or a panel may, upon approval of the board, conduct additional fact-
8 finding interviews in accordance with §29-33-9 of this code.

9 (2) Panel findings and recommendations shall be referred to the full board for its
10 consideration.

11 (c) A finding or recommendation may not be based solely upon an unsworn complaint or
12 statement, nor may prior unsubstantiated, unfounded or withdrawn complaints filed with the
13 board, or be the basis for any such finding or recommendation concerning an individual complaint.
14 This rule may not be an impediment to any recommendations or findings made with regard to
15 overall patterns or practice of inappropriate behavior, policies or procedures, which may in part
16 rely on complaints, no matter their disposition, filed with a law-enforcement agency, the board, or
17 both a law-enforcement agency and the board.

18 (d) Panels or the board shall employ a “preponderance of the evidence” standard of proof
19 in evaluating cases, and their findings shall be grounded in and by competent support or evidence.

20 (e) A report of the findings and recommendations with respect to each case investigation
21 reviewed shall be prepared and transmitted to the appropriate oversight authority. Where the
22 disposition of one or more allegations is "Substantiated," as defined in subsection (f) of this
23 section, such report shall be forwarded in writing within five business days of such substantiation
24 and shall include appropriate information regarding the subject officer, the case number and any
25 other control or serial number assigned to the case, and a summary of the pertinent facts.

26 (f) The following categories of case investigation dispositions shall be used in reports to
27 the appropriate oversight authority:

28 (1) Substantiated: the acts alleged did occur and did constitute misconduct.

29 (2) Unsubstantiated: there was insufficient evidence to establish whether there was an act
30 of misconduct.

31 (3) Exonerated: the acts alleged did occur but did not constitute misconduct.

32 (4) Unfounded: the acts alleged did not occur.

33 (5) Complaint Withdrawn: the complainant voluntarily withdrew the complaint.

34 (6) Complainant Unavailable: the complainant could not be located following at least four
35 attempts to contact the complainant by telephone, certified mail, in-person visit, and electronic
36 communication, respectively.

37 (7) Complainant Uncooperative: the participation of the complainant was insufficient to
38 enable the board to conduct a full investigation.

39 (8) Officer Unidentified: the board was unable to identify the officer who was the subject
40 of the allegation.

41 (9) Referral: the complaint was referred to another authority with jurisdiction over the law-
42 enforcement officer.

43 (10) No Jurisdiction: the complaint does not fall within the jurisdiction of the board.

44 (11) No Prima Facie Case: the complaint does not state a prima facie case.

45 (12) Mediated: the parties to the mediation agreed that the complaint should be considered

46 as having been resolved through mediation.

47 (13) NPD Disciplinary Action: accepted as Sufficient.

48 (14) Other articulated reasons: as from time to time determined by the board.

49 (g) The board may close without conducting a full investigation any case falling within
50 subdivisions (5) through (14), subsection (f) of this section: *Provided*, That a justification for the
51 action is stated on the record (for example, what are the circumstances relating to the withdrawal
52 of the complaint).

53 (h) Prior to the closure of any case, board members shall be afforded an opportunity to
54 review such case and vote in a public session.

55 (i) The board at the outset of its operation shall adopt guidelines to handle requests for
56 withdrawal.

§29-33-12. Resolution of complaints and investigations.

1 (a) The board shall establish and use a discipline matrix and guidelines to recommend
2 discipline for outcomes resulting from investigations and complaints filed with the board.

3 (1) The discipline matrix and guidelines shall ensure the consistent application of discipline
4 and should include aggravating and mitigating factors.

5 (2) The discipline matrix and guidelines should be developed by the board and affected
6 law-enforcement agencies.

7 (3) The discipline matrix and guidelines shall be completed no later than six months after
8 the establishment of the board.

9 (b) The board shall provide its findings of fact to the body with appropriate oversight
10 authority, and absent clear error, those findings of fact shall be accepted. The board shall also
11 make disciplinary recommendations, and the oversight authority shall make all disciplinary
12 decisions based on the board's findings of fact, absent clear error, and consistent with the matrix
13 and guidelines.

14 (c) The board shall establish a mediation program pursuant to which a complainant may

15 voluntarily choose to resolve a complaint by means of informal conciliation

16 (d) A finding or recommendation may not be based solely upon an unsworn complaint or
17 statement, nor may prior unsubstantiated, unfounded or withdrawn complaints be the basis for
18 any such finding or recommendation with regard to a particular complaint, but the findings or
19 recommendations shall be reasonably supported by evidence.

20 (e) In any case substantiated by the board in which the oversight authority finds clear error
21 in the findings of fact or intends to impose discipline that is of a lower level than that recommended
22 by the board, the oversight authority shall notify the board in writing, prior to the imposition of such
23 discipline, detailing the specific reasons for the decision not to accept the board's findings of fact,
24 or to impose the discipline recommended by the board. The board may then request that the
25 oversight authority provide further explanation or to address questions from the board. The
26 oversight authority shall cooperate with requests to appear before the board.

§29-33-13. Disciplinary oversight.

1 (a) The board shall forward to the appropriate oversight authority a report of the board
2 reflecting the results of its review for every complaint. The board shall include all relevant forms,
3 memoranda and background information to assist the oversight authority in making a final
4 disciplinary determination.

5 (b) The board shall provide its findings of fact to the appropriate oversight authority and,
6 absent clear error, the authority shall accept those findings of fact and consider the board's
7 recommended discipline. Clear error exists when the board's findings of fact are based upon
8 obvious and indisputable errors and cannot be supported by any reasonable interpretation of the
9 evidence. The oversight authority may ask the board for additional investigative or background
10 information in its possession. The oversight authority may also request further investigation or
11 development of the record to enable them to make a final disciplinary determination.

12 (c) Based on the board's findings of fact, absent clear error, the appropriate oversight
13 authority shall make all disciplinary decisions, consistent with the matrix and guidelines. In any

14 case substantiated by the board in which the oversight authority finds clear error in the findings
15 of fact or intends to impose discipline that is of a lower level than that recommended by the board
16 or by the law-enforcement agency, the oversight authority shall notify the board prior to the
17 imposition of such discipline. The notification shall be in writing and shall include a detailed
18 explanation of the reasons for deviating from the board's or, as the case may be, the law-
19 enforcement agency's, recommendation or findings of fact including, but not limited to, each factor
20 the oversight authority considered in making its decision.

21 (d) The board shall publish on its publicly-accessible website and shall submit to the
22 Legislature an annual report identifying each instance in which oversight authorities or law-
23 enforcement agencies find clear error in the findings of fact or imposes discipline that is of a lower
24 level than recommended by the board and include a copy of the oversight agency's written,
25 detailed explanations with redaction of any personally identifiable information.

NOTE: The purpose of this bill is to create a Law-Enforcement Transparency Board authorized to receive complaints made against law-enforcement personnel and investigate and participate in the resolution of complaints filed by members of the public. The bill provides that these complaints shall be investigated and discipline, if any, shall be recommended to the appropriate oversight authority.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.