

June 24, 2022

## MEMORANDUM

**To:** Public Safety and Human Services Committee  
**From:** Ann Gorman, Analyst  
**Subject:** Proposed substitute bill to CB 120337

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On June 28, 2022, the Public Safety and Human Services Committee plans to vote on whether to substitute [Council Bill \(CB\) 120337](#) as introduced with a new version and whether to vote it out of Committee. CB 120337 would create a process and oversight framework for complaints to the Office of Police Accountability (OPA) that name the Chief of Police. CB 120337 (D1b) was introduced and referred on June 7, following Committee discussion of an un-introduced draft version of the bill on May 24. Central Staff presented changes to CB 120337 as introduced on June 14, reflected in D2a. Since that time, Central Staff has continued to discuss the legislation with OPA and the Office of the Inspector General (OIG) and reflected changes from those discussions in the substitute version of the bill (D2b). This memo is an updated version of the [Central Staff memo from June 12](#) and reflects changes made since that time. The memo provides an overview of the intent of CB 120337, summarizes the differences between the introduced version of the bill (D1b) and the proposed substitute version of the bill (D2b), and lays out next steps.

### Overview of Council Bill 120337 as Introduced

In 2017, [Ordinance 125315](#) established the City's police accountability system, including the roles of OPA and OIG. This ordinance gave OPA authority over complaints of misconduct involving Seattle Police Department (SPD) employees relating to SPD policy and federal, state, and local law. However, the ordinance did not take into account the handling of complaints that named the Chief of Police. Because both the OPA Director and the Chief of Police are Mayoral appointees, and OPA's practice following its investigations is to recommend findings to the Chief of Police, complaints that name the Chief could involve either a perceived or an actual conflict of interest. CB 120337 would establish a different process for the intake, evaluation, classification (i.e., does the complaint warrant an investigation?), and investigation of such complaints either by a City unit or by an independent investigative body that is external to the City.

CB 120337 would propose a role for OIG related to complaints that name the Chief that is consistent with its oversight role as described in Ordinance 125315. That role includes the review of misconduct complaint handling, investigations, and other activities that OPA performs and the audit of and review for any areas that may involve conflicts of interest or otherwise compromise the public's trust in the City's criminal justice system.

CB 120337 would also require that the complainant and stakeholders<sup>1</sup> in the City's police accountability system are notified in the following circumstances:

- By OPA or OIG, when an investigation will be conducted following a complaint that names the Chief;
- By OIG, when it is unable to determine in its oversight role whether a completed investigation was timely, thorough, objective, and independent;
- By OIG, when it has determined that a completed investigation was not timely, thorough, objective, and independent; and
- By the Mayor, upon receipt of a completed investigation and its findings, with notification to include statements on those findings and of whether the Chief will be discharged, or any disciplinary action will be taken against the Chief.

### **Proposed Substitute For Council Bill 120337**

In response to discussions with OPA and OIG, the substitute bill would reflect a variety of changes. The most significant of these is a revision to the intake and classification requirements described in CB 120337, which follow a standard rubric that is described in the OPA Manual ("Manual") and that align with the relevant collective bargaining agreements (e.g., the Seattle Police Officers' Guild). The Chief is not governed by a collective bargaining agreement, so the Manual's process and structure do not apply. Where the Manual requires that complaints are ultimately classified into one of four categories, the proposed substitute bill would provide only two options for the complaints that name the Chief – a contact log<sup>2</sup> or the conduct of an investigation. The proposed substitute bill would also eliminate the requirement that a complaint that names the Chief is classified within 30 days in favor of a more deliberative process to determine whether an investigation is warranted.

Other changes in the proposed substitute bill (1) clarify OIG's oversight role; (2) more accurately reflect current practices; and (3) clarify that complaints that name the Chief which may result in a criminal charge or charges are the only such complaints in which there is a role for an external law enforcement agency. A revision to the proposed bill's effective date reflects that its provisions will require court approval, consistent with the July 2012 Consent Decree between SPD and the U.S. Department of Justice.

Table 1 summarizes these changes. Attachment A to this memo is a redline version of CB 120337 D1b, showing the changes in the substitute bill (D2b).

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<sup>1</sup> These stakeholders are the Mayor, the President of the City Council, the Chair of the Council's public safety committee, the Executive Director and Co-Chairs of the Community Police Commission, the City Attorney, and the City Director of Human Resources.

<sup>2</sup> A contact log includes circumstances when (a) the complaint does not involve a potential policy violation; (b) there is insufficient information to proceed with further inquiry; (c) the complaint has already been reviewed or adjudicated by OIG and/or OPA; or (d) the complaint presents fact patterns that are clearly implausible or incredible, and there are no indicia of other potential misconduct.

Table 1. Description of Changes in Proposed Substitute for CB 120337 (D2b)

Section/Title	Proposed Changes
3.29.500 Definitions	Strike definitions that are no longer applicable under the proposed revised intake process; add a definition for “intake.”
3.29.510 OPA intake, examination, classification, and investigation scoping	For complaints, eliminate requirements that: (1) the Chief is notified and (2) the complaint is classified according to the rubric of the OPA Manual within 30 days. Revise classification requirement as described above. Add reference to the desirability of an interview with the complainant during the intake process. Establish an open-ended consultative role for OIG as OPA is evaluating the complaint to determine whether an investigation is warranted. Require consideration of whether a complaint could lead to criminal charges prior to classification, rather than after classification. Create new notification requirement to the complainant and a subset of public accountability stakeholders <sup>3</sup> should OIG determine that OPA’s evaluation is unnecessarily delayed. Add requirement that OPA document real or perceived conflicts of interest. Revise description of investigative plan preparation to better reflect OPA practice.
3.29.520 OIG review	Align bill language with the elimination of the classification requirement noted above. Add requirement that the Chief is notified if a complaint has been determined to be appropriate for investigation.
3.29.530 Notification and reporting	Align bill language with the elimination of the classification requirement noted above. Move notification requirement from OPA to OIG. Strike one element previously required in notification of investigation to complainant and police accountability stakeholders.
3.29.540 Assigning the investigation	Replace references to specific external law enforcement agencies with more general “appropriate and qualified” language.
3.29.550 Investigation	Clarify references to collective bargaining agreements. Revise description of development of range of discipline to better reflect OPA practice.
3.29.560 OIG review of the intake investigation, classification, and investigation	Change “timely, thorough, and objective” to “timely, thorough, and neutral” to better reflect OIG’s evaluative mandate. Add language referencing the possibility that OIG determines that an investigation was not timely, thorough, objective, and neutral.

<sup>3</sup> These stakeholders are the President of the City Council and the Chair of the Council’s public safety committee.

Section/Title	Proposed Changes
3.29.570 Transmittal of investigative results	Change “timely, thorough, and objective” to “timely, thorough, and neutral” to better reflect OIG’s evaluative mandate.
3.29.610 Implementation	Strike extraneous references to collective bargaining obligations and the obligations they create.

The proposed substitute bill would also make various non-substantive changes, including:

- In the recitals, minor textual edits for clarification, particularly around the specific non-applicability of a collective bargaining agreement to the Chief of Police.
- Throughout, the replacement of “the Equal Employment Opportunity Act” with a more expansive reference to the various statutes and policies that may apply.
- Throughout, new internal cross-references that have the effect of narrowing the definition of a non-City entity where necessary (see 3.29.540.C).
- Edits for clarity, consistency, and concision and to correct prior textual errors.

**Next Steps**

If Committee members vote to replace D1b with D2b and subsequently vote D2b out of Committee, version D2b of CB 120337 may be voted on at the next City Council meeting on July 5.

**Attachments:**

1. Redline comparison of D1b to D2b (CB 120337)

cc: Esther Handy, Director  
Aly Pennucci, Deputy Director  
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