Police Oversight in Florida after House Bill 601

HB 601, Section 1

Section 1. Section 30.61, Florida Statutes, is created to read:

30.61 Establishment of civilian oversight boards.—

(1) A county sheriff may establish a civilian oversight board to review the policies and procedures of his or her office and its subdivisions.

(2) The board must be composed of at least three and up to seven members appointed by the sheriff, one of which shall be a retired law enforcement officer.

HB 601, Section 2

Section 2. Section 112.533, Florida Statutes, is amended to read:

112.533 Receipt and processing of complaints.—

(1) It is the intent of the Legislature to make the process for receiving, processing, and investigation of complaints against law enforcement or correctional officers, and the rights and privileges provided in this part while under investigation, apply uniformly throughout this state and its political subdivisions.

HB 601, Section 2

112.533 Receipt and processing of complaints.—

(2) As used in this section, the term “political subdivision” means a separate agency or unit of local government created or established by law or ordinance and the officers thereof and includes, but is not limited to, an authority, a board, a branch, a bureau, a city, a commission, a consolidated government, a county, a department, a district, an institution, a metropolitan government, a municipality, an office, an officer, a public corporation, a town, or a village.

HB 601, Section 2

112.533 Receipt and processing of complaints.—

(3) A political subdivision may not adopt or attempt to enforce any ordinance relating to either of the following:

(a) The receipt, processing, or investigation by any political subdivision of this state of complaints of misconduct by law enforcement or correctional officers, except as expressly provided in this section.

(b) Civilian oversight of law enforcement agencies' investigations of complaints of misconduct by law enforcement or correctional officers.

HB 601, Section 6

Section 6. Section 166.0486, Florida Statutes, is created to read:

166.0486 Establishment of civilian oversight boards.—

(1) The chief of a municipal police department may establish a civilian oversight board to review the policies and procedures of his or her department and its subdivisions.

(2) The board must be composed of at least three and up to seven members appointed by the chief of the municipal police department, one of which shall be a retired law enforcement officer.

What is Civilian Oversight of Law Enforcement?

Models of Civilian Oversight: Investigative

- The investigative model allows for an independent investigation of a complaint outside of the realm of internal affairs ("IA").
- This model generally provides for more autonomy for the oversight entity and while they may work with IA on a daily basis, they are not governed by IA personnel.

For a more detailed discussion regarding the various models of civilian oversight, please see https://www.nacole.org/oversight_models.

Models of Civilian Oversight: Review

- The review model allows for an analysis of the IA investigation, but only after the department's investigation has been completed.
- The review and analysis under this model is typically limited to what was included in the completed investigation.

For a more detailed discussion regarding the various models of civilian oversight, please see https://www.nacole.org/oversight_models.

Models of Civilian Oversight: Audit

- The audit model predominantly features an analysis of the IA complaint process and assesses the strengths and weaknesses of the process through a sampling of closed IA files.
- This model also assesses internal personnel's adherence to both external and internal Department requirements.

For a more detailed discussion regarding the various models of civilian oversight, please see https://www.nacole.org/oversight_models.

Does HB 601 Ban all Types of Civilian Oversight?

Representative Wyman Duggan

(District 12 – parts of Duval County)

(Sponsor of HB 601)

The Florida Roundup, June 21, 2024

"I understand the sentiment that they [Civilian Oversight Boards] help build community trust. They will be able to continue talking about policies, procedures, training, culture, systemic abuses, patterns and practices of behavior.

All they will not be able to do, is receive, process, and investigate incidents of misconduct."

Real World Examples

Key West Charter, Section 1.07(I)(a)

1.07 - Citizen review board.

I. *Duties and powers of the board.*

(a) The Citizen Review Board (CRB) is an independent board with authority to review and/or investigate complaints involving Key West police officers and forward findings and/or recommendations to City management, the chief of police, State Attorney, other state and federal law enforcement agencies and/or grand juries. The chief of police must respond to CRB recommendations in writing within thirty (30) days.

https://library.municode.com/fl/key_west/codes/code_of_ordinances?nodeId=PTICH_ARTIGE_1.07CIREBO

City of Miami Charter, Section 51

Sec. 51. - Civilian investigative panel.

The city commission shall, by ordinance, create and establish a civilian investigative panel to act as independent citizens' oversight of the sworn police department, to be: . . .

https://library.municode.com/fl/miami/codes/code_of_ordinances?nodeId=PTICHRELA_SPATHCH_S51CIINPA

City of Tampa Code, Section 18-8(a) and (b)

Sec. 18-8. - Citizen Review Board for the Tampa Police Department.

(a) *Creation.* There is hereby established the citizen police review board ("CRB") with respect to the Tampa Police Department ("TPD" or "department").

https://library.municode.com/fl/tampa/codes/code_of_ordinances?nodeId=COOR_CH18PO_ARTIINGE_S18-8CIREBOTAPODE

What does this mean for cities?

- Investigative model?
- Review model?
- Audit model?
- Charter provisions?
- Ordinances?
- Resolutions?
- Chief created oversight?

What might it look like?

Sec. 11.5-27. Purposes, powers and duties.

The purpose, powers and duties of the CIP are to:

(1) Act as independent civilian oversight of the sworn officers of the city's police department;

(2) Exercise its powers so as to not interfere with any pending or potential criminal investigations or prosecutions and conduct its activities consistent with applicable law, including but not limited to the Florida Government in the Sunshine Law, and with applicable labor contracts;

(3) Engage the services of trained ~~investigators~~analysts and secure adequate training for its members, including training in police policies and practices;

(4) Conduct ~~investigations consistent with the procedures set forth in section 11.5-31,~~ reviews, inquiries, audits, and public hearings to make factual determinations, facilitate resolutions, and propose recommendations as to disposition or other outcome to the police chief, city manager, or, where appropriate, other city officials regarding:

~~a. Allegations of misconduct by officers of the city's police department;~~

b. Incidents of uses of force by officers of the city's police department resulting in death or great bodily harm to a person, with the mandatory duty to automatically investigate police shootings or other uses of force resulting in the death of a person; and

c. incidents, events, or systemic problems involving officers of the city's police department that affect the community.

What might it look like?

Sec. 11.5-31. Procedures for ~~investigation of direct filed cases, investigation, or~~ review of internal affairs' closed cases; timeframes for and completion of ~~investigations and~~ reviews; review of police policies, procedures, and practices; and issuance of reports.

The following procedures shall be followed:

~~(1) *Directly filed cases.* Complaints concerning allegations of police misconduct, police uses of force, or other matters pertaining to repeated issues of police misconduct may be directly filed with the CIP by anyone, including a member of the CIP or its staff.~~

~~a. All complaints shall be reduced to writing using a form approved by the CIP for that purpose;~~

~~b. The police department shall be notified of complaints received by the CIP within two working days;~~

~~c. All complaints must be submitted within a year of the date of the incident or event, or within one year of the complainant becoming aware of the systemic problem, giving rise to the complaint. Complaints filed more than one year thereafter may, however, be accepted by the CIP only if approved by a majority vote of its members.~~

What might it look like?

Sec. 11.5-31. Procedures for ~~investigation of direct filed cases, investigation, or~~ review of internal affairs' closed cases; timeframes for and completion of ~~investigations and~~ reviews; review of police policies, procedures, and practices; and issuance of reports.

(2) ~~*Investigation or*~~ *review of CIP cases.*

a. ~~*Investigation of directly filed cases.* Investigation of complaints directly filed with the CIP shall proceed as follows:~~

~~1. Where a directly filed complaint involves potentially criminal conduct by a police officer, the CIP may proceed with an investigation upon receipt of a written determination by its independent counsel, who shall be required to consult with the appropriate prosecutorial agencies, that such an investigation will not interfere with any pending or potential criminal investigation or prosecution. A decision of the CIP to proceed with such an investigation may be challenged by any prosecutorial agency engaged in investigating or prosecuting the same matter by seeking a judicial order. Written notification of such a legal challenge shall stay the CIP's investigation for 48 hours permitting the prosecuting agency to obtain such a judicial order.~~

~~2. Upon determination by the executive director, in consultation with the independent counsel as needed, that a directly filed complaint does not involve potentially criminal conduct by a police officer, or upon the independent counsel's written determination that a CIP investigation will not interfere with any pending or potential criminal investigation or prosecution, the CIP may proceed with an independent investigation of the complaint in accordance with the time frames specified in subsection (3) below.~~

Final Thought

"Further, to be clear, our holding today does not address any other functions of the CIP in its mission of acting as an "independent citizens' oversight of the sworn police department." Miami, Fla., Charter, § 51(2012). For instance, internal affairs investigations become public record once they are complete or are no longer active. § 112.533(2)(a), Fla. Stat. As a result, the CIP has ready access to all of the investigatory materials arising from the investigation conducted by Internal Affairs. Thus, the subsequent review of an investigation of a complaint against a law enforcement officer, without subpoena power, is not inconsistent with the structure of the PBR [Section 112.531, Fla. Stat. *et seq.*]."

D'Agostino v. City of Miami, 220 So. 3d 410, 427 (Fla. 2017).

WEISS SEROTA
HELFMAN COLE + BIERMAN

John J. Quick
jquick@wsh-law.com
(305) 854-0800
#WSHCBLaw | wsh-law.com

Questions?