

Item # 74 (4)

**ADDITIONAL MATERIAL
Public Hearing
OCTOBER 20, 2020**

**SUBMITTED AT THE REQUEST OF
OFFICE of the COUNTY
ATTORNEY**

MEMORANDUM

TO: Mayor Dale V.C. Holness

FROM: Andrew J. Meyers, County Attorney *s/Andrew J. Meyers*

DATE: October 15, 2020

RE: **Revised Police and Criminal Justice Review Board Ordinance;
Item 74 on the Board's October 20, 2020, Public Hearing Agenda**

You have asked that we provide a brief summary of legal limitations on a County advisory board's authority to review police misconduct and disciplinary matters, as well as a summary of the current version of the proposed Police and Criminal Justice Review Board ("Review Board") Ordinance to be considered by the Board of County Commissioners (the "Board") on October 20, 2020.

I. Legal Limitations on the Review Board's Authority

The authority to review police misconduct and disciplinary matters is limited in several key respects. The Florida Police Officer's Bill of Rights ("PBR"), Section 112.532, Florida Statutes, provides for internal control, to be exercised by the officer's employer, of disciplinary procedures for police and correctional officers. Florida courts generally have held that the PBR is the exclusive method of officer discipline. For example, the Florida Supreme Court has held that the PBR precludes independent boards from issuing subpoenas or compelling law enforcement officers to testify in connection with investigations of complaints. *D'Agastino v. City of Miami*, 220 So. 3d 410, 427 (Fla. 2017). The Court recognized that reports from internal police investigations become public records when the investigation is complete, at which point review of the records by an independent body would be permitted. However, the Court specifically prohibited independent bodies from subpoenaing officers, stating that such power would subject officers "to repeated governmental pressure over an extended time, rendering the limitations provision in the PBR meaningless." *Id.* at 426. The Court further cautioned that other types of action by advisory boards that "**might intrude on the field of disciplining officers**" may also be found to violate the PBR. *Id.* at 427 (emphasis added). Whether a proposed action "might intrude" into that field would require a fact-specific legal analysis. Essentially, however, we believe the following actions by a board not controlled by a police agency would be **presumptively impermissible**:

- Issuing a subpoena to a police or correctional officer;
- Investigating complaints against police or correctional officers;
- Requiring the Sheriff or a police chief, or his or her employees, to testify or produce documents regarding officer complaints (other than documents subject to the Public Records Act); or
- Investigating a matter that is also the subject of an open internal police investigation or a criminal investigation.

II. Summary of the Current Version of the Proposed Ordinance

During its October 6, 2020, meeting, the Board directed this Office to incorporate certain amendments into the proposed Ordinance. The below listed amendments reflect the material changes from the initial version of the proposed Ordinance that was printed with the September 22 Board meeting agenda:

Membership:

- Added member nominations by the Caribbean Bar Association, New Florida Majority, Black Lives Matter, the Broward Behavioral Health Coalition (for a mental health professional), the Pride Center at Equality Park, and the American Civil Liberties Union;
- Changed the two law enforcement representatives to voting members;
- Added language encouraging but not requiring Commissioners to include a social or data scientist and representatives of the following groups on the Review Board: people with disabilities, working-class people, and religious minorities;
- Amended the clergy nomination so the nominating entity is a clergy group;
- Changed the duration of member terms to four (4) years for County Commissioner nominees and two (2) years for all other members;
- Allows those serving as a member of another County advisory board to serve on the Review Board;
- Allows members nominated by a County Commissioner to be removed at any time with or without cause; and
- Removed the requirement that the NAACP nominee be an attorney.

Goals, Functions, and Powers:

- Required that the Review Board publish a report at least once every six (6) months and that the Review Board's staff send data to the police agencies at least monthly;

- Added the “criminal justice system” in general to the Review Board’s areas of study;
- Expressly provided that the Review Board may gather facts, information, and testimony;
- Granted the Review Board subpoena power to the extent permitted by law;
- Added language providing that the Board may direct the Review Board to study specific subjects; and
- Added a new objective–“to develop best practices”–including for specific subjects such as de-escalation tactics and mental health.

Miscellaneous Provisions:

- Changed the sunset date to 2030;
- Added language requiring that Review Board meetings occur on weekday evenings whenever practicable; and
- Provided that the Review Board may ask for research support personnel.

In addition, our Office added language requiring that the Review Board not investigate matters subject to an open investigation by law enforcement or prosecutorial authorities, and language directing our Office to advise the Review Board and its members regarding the limitations and restrictions on its legal authority. This language is intended to avoid instances where the Review Board might engage in actions in conflict with Florida law.

Please contact Senior Assistant County Attorney Adam Katzman, Assistant County Attorney Scott Andron, or me if you have any questions regarding this memorandum or the proposed Ordinance.

AJM/SA/gf

c: Board of County Commissioners
Bertha Henry, County Administrator
Kimm Campbell, Assistant County Administrator
Bob Melton, County Auditor