

Item # 88

ADDITIONAL MATERIAL

Regular Meeting

JUNE 16, 2020

SUBMITTED AT THE REQUEST OF

MAYOR DALE V.C.

HOLNESS

MEMORANDUM

TO: Mayor Dale V.C. Holness

FROM: Scott Andron, Assistant County Attorney

DATE: June 11, 2020

**RE: Police review board options
CAO File: 10002.0000**

You have asked the Office of the County Attorney to prepare an informal list of options that the County might be able to use to address police misconduct, use of force, and other criminal justice issues. We have compiled a preliminary outline based primarily on your initial interest in police misconduct and use of force. Please note that this list is highly preliminary and that any ideas would require thorough legal vetting. We also recommend that the Board receive input from persons with appropriate policy expertise in criminal justice.

Typically, police review boards are groups of non-specialist citizens appointed by a governing body such as a city council or county commission to review and comment upon the findings of internal police¹ investigations. However, as discussed below, their precise functions, structure and nomenclature varies widely from one community to the next. For example, some cities employ an individual to carry out similar functions rather than a board. Extensive information about police review boards, including references and links to specific examples, may be found on the website of the [National Association for Civilian Oversight of Law Enforcement](#) (NACOLE).

Many of the practices employed by police review boards elsewhere might not be legally permissible in Florida. Florida statutes and case law strongly favor *internal* review of alleged police misconduct by the officer's employer. However, Broward County might be able to play a role to some extent. Following is a preliminary outline of options.

¹ As used in this document, "police" includes all law-enforcement agencies and their sworn officers, including sheriff's deputies and municipal police officers.

I. General criminal justice

- A. *Public Safety Coordinating Council (PSCC).* [This council](#) was created by the Board of County Commissioners. Its members include judges, mental health specialists, police, prosecutors and defense attorneys, among others. The Board could expand its functions beyond the current focus on jails. For instance, Palm Beach County has a Criminal Justice Commission with a similar composition to Broward's PSCC but a broader mandate to "study all aspects of the criminal justice and crime prevention systems within the federal, state, county, municipal and private agencies within the County." Palm Beach County Code of Ordinances, § 2-217.
- B. *Consulting project.* The County could hire a consultant(s) to study Broward's criminal justice system or those parts of it under the County's control or identified by the Board. Consultants may be available in academic, nonprofit, or for-profit sectors. Consultants should be carefully vetted in advance for appropriate expertise, experience and references.

II. Police use of force and misconduct

A. *Legal limitations*

1. **Outside agency disciplinary process.** Florida law requires law-enforcement and correctional agencies to develop disciplinary procedures. § 112.533, Fla. Stat. At least one important case has held that this statute preempts county review of agency decisions for disciplinary purposes without the agency's consent. In 2009, a Florida appellate court struck down the entire police review board system approved by voters in the Orange County Charter.² The Court held that "section 112.533 limits the investigation of complaints against law enforcement ` by local government to the employing agency's investigation" and that "the charter provisions and ordinance that establish an additional procedure for investigating these complaints necessarily and directly conflict with the statute." Therefore, the County must be wary of injecting itself into the internal disciplinary investigations of police agencies unless the agency designates the County to serve as an official part of its process.
2. **Inside agency disciplinary process.** A few Florida police agencies incorporate civilian review boards into their internal disciplinary procedures. It appears that in all cases – Seminole County Sheriff, City of Miami, City of St. Petersburg – the review board was created by the police agency. However, it might be possible for a police agency to designate a County-created committee or office as its police review board.

² Demings v. Orange County Citizens Review Bd., 15 So. 3d 604 (Fla. 5th DCA 2009).

B. *Structure*

1. **Individual or board?** Some jurisdictions use a deliberative body to review or study police use of force, while others appoint an individual with special expertise, sometimes called a police monitor, inspector general, or police auditor. In jurisdictions where a board is used, they are often assisted by professional staff, either within the police agency or elsewhere.
2. **Partnerships.** As with the PSCC, the Board could involve specialists in whatever entity is created. Other partnerships are possible. One city – Albany, New York – receives staffing for its police review board from a local law school.

C. *Functions*

1. **Investigation of specific cases.** A County committee or office probably could not directly or indirectly investigate cases for disciplinary purposes under current law. In addition, direct investigation requires special expertise.
2. **Review of specific cases.** A County committee or office would have little or no authority to make recommendations or otherwise pass on the correctness or wisdom of specific disciplinary decisions unless a police agency incorporated the County committee or office into its official disciplinary process. Further legal analysis would be necessary to determine whether a County committee or office could express a non-binding opinion on specific cases.
3. **Review of cases to identify trends and issues.** It probably would be permissible for a County committee or office to review cases in the aggregate to identify trends or issues. As a practical matter, given the number of cases, this process could be time consuming and require special expertise.
4. **Receipt and transmittal of complaints.** Florida law expressly contemplates that counties may receive complaints pertaining to police officers. However, the law states that these complaints should be forwarded to the officer's employing agency. Section 112.533(1)(b)1 provides that "[a]ny political subdivision that initiates or receives a complaint against a law enforcement officer or correctional officer must within 5 business days forward the complaint to the employing agency of the officer who is the subject of the complaint for review or investigation."
5. **Compilation and dissemination of information.** A County committee or office almost certainly could compile information from police agencies and publish this information for the public and other interested stakeholders to examine. For example, a few jurisdictions publish online databases of use-of-force incidents, showing basic facts such as location, outcome, and demographics of the officer and alleged victim. [Indianapolis](#) is an example.

The County also could study specific issues, selected by the Board or the new committee or office, and publish its findings.

6. **Grant-making.** The County could offer grants to nonprofit organizations to perform some of the foregoing functions.

D. *Possible models.* Given the legal limitations imposed in Florida, there does not appear to be a model the County could adopt wholesale from another jurisdiction, although elements could be borrowed from many places. With that caveat, some jurisdictions come closer than others to a model the County could use. The following are two examples of such jurisdictions:

1. [San Jose, California, Police Auditor](#). This entity performs the following functions:
 - i. Complaint intake. Accepts complaints against officers and forwards them to the police department for investigation.
 - ii. Result review. Reviews the results of internal police investigations and may ask the department to reopen. This could be difficult in Florida because police disciplinary investigations generally must be completed within 180 days. § 112.532(6), Fla. Stat.
 - iii. Publishes annual report and statistics.
 - iv. May interview civilian witnesses. Would require further study, but this might not be permissible in Florida.
 - v. May observe (but not participate in) internal affairs interviews with officers. Probably would require agency consent in Florida.
2. [Albany, New York, Community Police Review Board](#). This entity performs the following functions:
 - i. May review and comment on completed internal investigations. Same as above: would require further legal analysis.
 - ii. Receives staff support from Government Law Center at Albany Law School.
 - iii. Members must receive training.