

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 601 Complaints Against Law Enforcement and Correctional Officers

SPONSOR(S): Duggan and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 3 N	Padgett	Hall
2) Local Administration, Federal Affairs & Special Districts Subcommittee	11 Y, 4 N	Roy	Darden
3) Judiciary Committee	16 Y, 3 N	Padgett	Kramer

SUMMARY ANALYSIS

Generally, a civilian oversight agency (COA) is a governmental entity created by a county or municipality to provide external oversight of a law enforcement agency that is comprised of citizens who are not sworn law enforcement officers. The structure, duties, and budgets of COAs are determined by the establishing governmental body and may vary widely. The most complex COAs employ their own investigators who conduct independent investigations into law enforcement officer misconduct parallel to any internal investigation conducted by a law enforcement agency and, if an allegation of misconduct is verified, make recommendations of specific disciplinary measures. Conversely, other COAs are limited to reviewing the results of misconduct investigations conducted by the related law enforcement agency and making advisory recommendations.

Under current law, there is no statute that explicitly authorizes a local government to create a COA, nor is there any statute that provides standards relating to the structure, duties, powers, and membership of a COA. However, the Florida Supreme Court (FSC) has held the provisions in the Law Enforcement Officer's Bill of Rights in ch. 112, part IV, F.S., governing the receipt and processing of misconduct complaints are so expansive that they preempt an external entity such as a COA from using subpoena power to conduct an independent investigation into misconduct complaints against law enforcement or correctional officers by compelling such officers to appear before the COA for questioning. The FSC's holding did *not* interpret Florida law to prohibit a COA from issuing subpoenas to non-law enforcement officers, and also noted that a COA could still provide oversight over a law enforcement agency by reviewing all investigatory materials from an agency's internal misconduct investigation once an investigation has concluded since such materials become public record.

HB 601 creates s. 112.5331, F.S., to provide that it is the intent of the Legislature that the receipt, processing, and investigation of complaints against law enforcement officers and correctional officers, and the rights and privileges afforded to such officers while under investigation, apply uniformly throughout the state. The bill prohibits a county, municipality, special district, or other political subdivision of the state from passing or enforcing any ordinance, resolution, or rule relating to:

- The receipt, processing, or investigation of complaints of misconduct by law enforcement officers and correctional officers, except as expressly provided in s. 112.5331, F.S.; or
- Civilian oversight of a law enforcement agency in relation to the investigation of complaints of misconduct by law enforcement officers and correctional officers.

Thus, any COA that is currently performing such oversight functions related to the investigation of complaints of misconduct would be prohibited from continuing to do so after July 1, 2024. The bill does not eliminate or restrict misconduct investigations by an officer's employing agency, the Criminal Justice Standards and Training Commission, or criminal investigations arising out of such misconduct by a local, state, or federal law enforcement agency.

The bill prohibits local governments from passing specified ordinances, resolutions, or rules relating to the civilian oversight of misconduct complaints against law enforcement and correctional officers. To the extent that local governments are currently expending funds investigating complaints of misconduct against law enforcement officers and correctional officers, there may be a negative fiscal impact to local government expenditures since the bill prohibits local governments from continuing to conduct such investigations.

The bill provides an effective date of July 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0601e.JDC

DATE: 2/7/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Law Enforcement Officers – Misconduct Investigations

Internal Affairs

Generally, a formal investigation into misconduct by a law enforcement officer or correctional officer is initiated by a complaint filed with the officer's employing agency.¹ Depending on the nature of the complaint, an allegation of misconduct may either be investigated by an officer's supervisor or, in more serious cases, by the internal affairs division of the agency.² After the investigation is complete, the complaint is forwarded to the head of the law enforcement agency for final disposition, which, if the allegations in the complaint are sustained, could include disciplinary action.³ A misconduct complaint and all information obtained pursuant to the agency's internal investigation of such complaint are exempt from public disclosure under s. 119.07(1), F.S.,⁴ until the investigation ceases to be active, or until the agency head or the agency head's designee provides written notice to the officer who is the subject of the complaint that the agency has concluded the investigation and made a final determination as to whether the agency will proceed with disciplinary action against an officer.⁵

Criminal Justice Standards and Training Commission

The Criminal Justice Standards and Training Commission (CJSTC) was established within the Florida Department of Law Enforcement for the purpose of ensuring criminal justice officers in Florida are ethical, qualified, and well-trained.⁶ Among its duties, the CJSTC is responsible for certifying and, when warranted, revoking the certification of law enforcement officers, correctional officers, and correctional probation officers.⁷ The CJSTC may initiate an officer misconduct case following:

- A law enforcement agency's internal investigation that sustains an allegation of misconduct against an officer;
- An officer's separation from employment if misconduct was the reason for separation from employment;
- Notification of an officer's arrest;
- Receipt of a verifiable complaint from a citizen alleging misconduct; or
- An order by the Governor.⁸

If the CJSTC determines that probable cause exists that an officer committed misconduct, the CJSTC may discipline the officer by issuing a written reprimand, placing the officer's certification on probation for up to two years, suspending the officer's certification for up to two years, or revoking the officer's certification.⁹

Criminal Prosecution

¹ Pinellas County Sheriff's Office, *Commendation & Complaint Procedures*, https://www.pcsoweb.com/Data/Sites/1/media/extra-pdf/commendation_and_complaint_procedures-pages.pdf (last visited Feb. 7, 2024). Tallahassee Police Department, *General Order 29*, <https://www.talgov.com/uploads/public/documents/tpd/policies/go-29.pdf> (last visited Feb. 7, 2024).

² *Id.*

³ *Id.*

⁴ Section 119.07, F.S., generally authorizes the release of records held by the government to the public.

⁵ S. 112.533(2)(a), F.S.

⁶ Florida Department of Law Enforcement, *Criminal Justice Standards & Training Commission*, <https://www.fdle.state.fl.us/CJSTC/Commission.aspx> (last visited Feb. 7, 2024).

⁷ S. 943.12(3), F.S. Generally, a person must be certified by the CJSTC to be employed as a law enforcement officer, correctional officer, or correctional probation officer in Florida. S. 943.13, F.S.

⁸ Florida Department of Law Enforcement, *Florida's Criminal Justice Professional Compliance Process*, <https://www.fdle.state.fl.us/CJSTC/Documents/Publications/Professional-Compliance-Process.aspx> (last visited Feb. 7, 2024).

⁹ *Id.*

If a law enforcement or correctional officer's misconduct is severe enough to implicate a criminal law violation, the officer may be investigated by a local, state, or federal law enforcement agency and referred for criminal prosecution at any time.¹⁰

Law Enforcement Officers' Bill of Rights

Law enforcement officers and correctional officers are provided with specified rights when they are being investigated for misconduct by their own agencies. Chapter 112, part VI, F.S., commonly known as the Law Enforcement Officers' Bill of Rights (LEOBOR), provides specific rights when a law enforcement officer¹¹ or correctional officer¹² is under investigation and subject to interrogation by members of his or her agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal. LEOBOR prescribes the conditions under which an interrogation of an officer must be conducted, including limitations on the time, place, manner, and length of the interrogation, as well as restrictions on the interrogation techniques that may be employed.¹³ LEOBOR further affords officers the right to:

- Be informed of the nature of the investigation;
- Be provided with all evidence against the officer before any interrogation;
- Counsel during any interrogation;
- Have the interrogation recorded;
- A complete copy of the investigative file;
- Be notified of the reason for disciplinary action before it is imposed; and
- Address the findings in the investigative file with the employing agency before disciplinary action is imposed.¹⁴

In addition to providing a law enforcement officer or correctional officer with a list of rights that may be exercised while he or she is being investigated for misconduct by an agency, LEOBOR also requires every law enforcement agency and correctional agency to establish and put into operation a system for the receipt, investigation, and determination of misconduct complaints received by such agency from any person.¹⁵ Under LEOBOR, such a system "shall be" the procedure for investigating a complaint against a law enforcement or correctional officer and for determining whether to proceed with disciplinary action or to file disciplinary charges, notwithstanding any other law or ordinance to the contrary.¹⁶

Civilian Oversight of Law Enforcement Agencies

Generally

Generally, a civilian oversight agency (COA) is a governmental entity created by a county or municipality to provide external oversight of a law enforcement agency that is comprised of citizens who are not sworn law enforcement officers.¹⁷ The structure, duties, and budgets of COAs are

¹⁰ S. 112.532(1)(j), F.S.

¹¹ "Law enforcement officer" is defined as any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07, F.S. S. 112.531(3), F.S.

¹² "Correctional officer" is defined as any person, other than a warden, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution; and includes correctional probation officers, as defined in s. 943.10(3), F.S. However, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel. S. 112.531(2), F.S.

¹³ S. 112.532(1), F.S.

¹⁴ S. 112.532(1) and (4), F.S.

¹⁵ S. 112.533(1)(a), F.S.

¹⁶ *Id.*

¹⁷ James E. Wright, *Improving Police-Community Relations: The Role of Civilian Oversight Agencies in Florida*, LeRoy Collins Institute, https://lci.fs.u.edu/wp-content/uploads/sites/28/2022/08/FINAL-Improving-Police-Community-Relations_-The-Role-of-Civilian-Oversight-Agencies-COA-in-Florida.pdf (last visited Feb. 7, 2024).

determined by the establishing governmental body and may vary widely.¹⁸ The most complex COAs employ their own investigators who conduct independent investigations into law enforcement officer misconduct parallel to any internal investigation conducted by a law enforcement agency and, if an allegation of misconduct is verified, make recommendations of specific disciplinary measures.¹⁹ Conversely, other COAs are limited to reviewing the results of misconduct investigations conducted by the related law enforcement agency and making advisory recommendations.²⁰

Florida

According to a December 2021 report by the LeRoy Collins Institute, there are 21 COAs operating in Florida.²¹ However, because there is not a formal definition of what constitutes a COA, the exact number of COAs currently in operating in Florida is unclear.²² Under current law, there is no statute that explicitly authorizes a local government to create a COA, nor is there any statute that provides standards relating to the structure, duties, powers, and membership of a COA. However, the Florida Supreme Court (FSC) has held the provisions in LEOBOR governing the receipt and processing of misconduct complaints are so expansive that they preempt an external entity such as a COA from using subpoena power to conduct an independent investigation into misconduct complaints against law enforcement or correctional officers by compelling such officers to appear before the COA for questioning.²³ The FSC's holding did *not* interpret Florida law to prohibit a COA issuing subpoenas to non-law enforcement officers, and also noted that a COA could still provide oversight over a law enforcement agency by reviewing all investigatory materials from such agency's internal misconduct investigation once an investigation has concluded since such materials become public record.²⁴

Effect of Proposed Changes

HB 601 creates s. 112.5331, F.S., to provide that it is the intent of the Legislature that the receipt, processing, and investigation of complaints against law enforcement officers and correctional officers, and the rights and privileges afforded to such officers while under investigation, apply uniformly throughout the state. The bill prohibits a county, municipality, special district, or other political subdivision of the state from passing or enforcing any ordinance, resolution, or rule relating to:

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The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 112.5331, F.S., relating to preemption to the state.

¹⁸ U.S. Department of Justice, *Citizen Review of Police: Approaches and Implementation*, <https://www.ojp.gov/pdffiles1/nij/184430.pdf> (last visited Feb. 7, 2024).

¹⁹ *Id.*

²⁰ *Id.*

²¹ As of December 2021, the following cities in Florida have an operational COA: Bradenton, Daytona Beach, Delray Beach, Fort Lauderdale, Fort Myers, Fort Pierce, Gainesville, Key West, Kissimmee, Lakeland, Miami, North Miami, North Miami Beach, Ocoee, Orlando, Pensacola, St. Petersburg, Tallahassee, Tampa, West Palm Beach, and Winter Haven. James E. Wright, *supra* note 7.

²² Many local governments and law enforcement agencies have created citizen advisory groups to provide broad operational recommendations relating to law enforcement agencies rather than to review specific issues of misconduct. If such advisory groups are deemed to provide sufficient "oversight" to be classified as a COA, the number of COAs in Florida would be higher than the number listed in the December 2021 report.

²³ *D'Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017).

²⁴ *Id.* at 427.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill prohibits local governments from passing specified ordinances, resolutions, or rules relating to the civilian oversight of misconduct complaints against law enforcement and correctional officers. To the extent that local governments are currently expending funds investigating complaints of misconduct against law enforcement officers and correctional officers, there may be a negative fiscal impact to local government expenditures since local governments would be prohibited from continuing to conduct such investigations.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES