

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 601 Law Enforcement and Correctional Officers

SPONSOR(S): Duggan and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 576

FINAL HOUSE FLOOR ACTION: 81 Y's 28 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 601 passed the House on February 22, 2024. The bill was amended in the Senate on March 1, 2024, and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on March 7, 2024.

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.

The bill amends s. 112.533, F.S., to provide that it is the intent of the Legislature to make the process for receiving, processing, and investigating complaints against law enforcement officers and correctional officers, and the rights and privileges provided to such officers while under investigation, apply uniformly throughout the state and its political subdivisions. The bill prohibits a political subdivision from adopting or attempting to enforce any ordinance related to:

- The receipt, processing, or investigation of complaints of misconduct by law enforcement officers or correctional officers, except as expressly provided in s. 112.533, F.S.; or
- Civilian oversight of law enforcement agencies' investigations of complaints of misconduct by law enforcement officers or correctional officers.

Under the bill, any COA that is currently performing such oversight functions related to the investigation of complaints of misconduct is prohibited from continuing to do so after July 1, 2024.

The bill amends ss. 30.61 and 166.0486, F.S., to authorize a sheriff or a chief of a municipal police department, respectively, to establish a civilian oversight board to review the policies and procedures of his or her office or department and its subdivisions. The bill requires such a civilian oversight board to be composed of at least three and up to seven members appointed by the sheriff or chief of police, one of which must be a retired law enforcement officer.

The bill amends s. 145.071, F.S., to increase the base salary for each county sheriff by \$5,000.

The bill may have an indeterminate fiscal impact on local governments. See Fiscal Impact & Economic Impact Statement.

The bill was approved by the Governor on April 12, 2024, ch. 2024-86, L.O.F., and will become effective on July 1, 2024.

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

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I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Complaints Against Law Enforcement Officers and Correctional Officers

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

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 Mar. 11, 2024). Tallahassee Police Department, *General Order 29*, <https://www.talgov.com/uploads/public/documents/tpd/policies/go-29.pdf> (last visited Mar. 11, 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 Mar. 11, 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 Mar. 11, 2024).

for up to two years, suspending the officer's certification for up to two years, or revoking the officer's certification.⁹

Criminal Prosecution

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

⁹ *Id.*

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.*

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 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 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 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 such agency's internal misconduct investigation once an investigation has concluded since such materials become public record.²⁴

Effect of the Bill – Complaints Against Law Enforcement Officers and Correctional Officers

The bill amends s. 112.533, F.S., to provide that it is the intent of the Legislature to make the process for receiving, processing, and investigating complaints against law enforcement officers and correctional officers, and the rights and privileges provided to such officers while under investigation, apply uniformly throughout the state and its political subdivisions.²⁵ The bill prohibits a political subdivision from adopting or attempting to enforce any ordinance related to:

- The receipt, processing, or investigation of complaints of misconduct by law enforcement officers or correctional officers, except as expressly provided in s. 112.533, F.S.; or

¹⁷ James E. Wright, *Improving Police-Community Relations: The Role of Civilian Oversight Agencies in Florida*, LeRoy Collins Institute, <https://lci.fsu.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 Mar. 11, 2024).

¹⁸ U.S. Department of Justice, *Citizen Review of Police: Approaches and Implementation*, <https://www.ojp.gov/pdffiles1/nij/184430.pdf> (last visited Mar. 11, 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 17.

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.

²⁵ The bill makes the existing definition of "political subdivision" in s. 112.533(1)(b)2., F.S., which under current law is applicable only to that paragraph, applicable to the entirety of s. 112.533, F.S., and defines "political subdivision" to mean 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.

- Civilian oversight of law enforcement agencies' investigations of complaints of misconduct by law enforcement officers or correctional officers.

Under the bill, any COA that is currently performing such oversight functions related to the investigation of complaints of misconduct is 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 CJSTC, or criminal investigations arising out of such misconduct by a local, state, or federal law enforcement agency.

The bill amends ss. 30.61 and 166.0486, F.S., to authorize a sheriff or a chief of a municipal police department, respectively, to establish a civilian oversight board to review the policies and procedures of his or her office or department and its subdivisions. The bill requires such a civilian oversight board to be composed of at least three and up to seven members appointed by the sheriff or chief of police, one of which must be a retired law enforcement officer.

Sheriff Salaries

Background

Article VIII, section 1(d) of the Florida Constitution establishes the offices of sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court in each county. Article II, section 5(c) of the Florida Constitution provides that the powers, duties, compensation, and method of payment of state and county officers, including the sheriff, shall be fixed by law. Section 145.071, F.S., provides a schedule for calculating the salary of each sheriff based on county population as follows:

Population Group	County Population Range		Base Salary	Group Rate
	Minimum	Maximum		
I	0	49,999	\$28,350	\$0.07875
II	50,000	99,999	\$31,500	\$0.06300
III	100,000	199,999	\$34,650	\$0.02625
IV	200,000	399,999	\$37,275	\$0.01575
V	400,000	999,999	\$40,425	\$0.00525
VI	1,000,000	–	\$43,575	\$0.00400

A sheriff's salary is calculated by adjusting the base salary for a sheriff's county to reflect the actual population within the given range,²⁶ then, to account for inflation, multiplying the result by several factors that are provided in statute.²⁷

The compensation requirements apply to sheriffs in all counties of the state, except those sheriffs from counties:

- Whose salaries are not subject to being set by the Legislature because of the provisions of a county home rule charter;²⁸ or
- With a consolidated form of government as provided in ch. 67-1320, Laws of Fla. (Duval County).²⁹

Effect of the Bill – Sheriff Salaries

The bill increases the base salary for a sheriff in each of the six population groups by \$5,000 as follows:

²⁶ The base salary is adjusted by multiplying the appropriate group rate by the population in excess of the minimum for the population group. The result is added to the base salary for the population group. S. 145.071, F.S.

²⁷ S. 145.19, F.S.

²⁸ There are currently 20 charter counties in Florida: Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla. Florida Association of Counties, *Charter County Information*, <https://www.fl-counties.com/charter-county-information> (last visited Mar. 11, 2024).

²⁹ S. 145.012, F.S.

Population Group	County Population Range		Base Salary	Group Rate
	Minimum	Maximum		
I	0	49,999	\$33,350	\$0.07875
II	50,000	99,999	\$36,500	\$0.06300
III	100,000	199,999	\$39,650	\$0.02625
IV	200,000	399,999	\$42,275	\$0.01575
V	400,000	999,999	\$45,425	\$0.00525
VI	1,000,000	–	\$48,575	\$0.00400

The effective date of the bill is 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:

Civilian Oversight Agencies

The bill prohibits local governments from adopting or attempting to enforce any ordinance relating to the civilian oversight of misconduct complaints against law enforcement and correctional officers, but also authorizes a sheriff or chief of police to establish a civilian review board to review the policies and procedures of his or her office or department and its subdivisions. Thus, the fiscal impact of the bill may vary depending on whether a local government is currently expending funds investigating complaints of misconduct and whether a sheriff or chief of police elects to establish a civilian oversight board as authorized under the bill. As such, the fiscal impact to local governments is indeterminate.

Sheriff Salaries

The fiscal impact on counties related to sheriff salary increases is indeterminate. The bill increases sheriffs' base salaries by \$5,000. The annual salary for each sheriff is based on a statutory formula contained in ss. 145.071 and 145.19, F.S. In September of each year, the Office of Economic and Demographic Research issues a report which contains the annual formula-based calculations of the salaries of elected county constitutional officers.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.