IN THE SUPREME COURT OF FLORIDA

CASE NO. SC-16-645

FREDDY D'AGASTINO, et. al.,

Petitioners,

vs.

THE CITY OF MIAMI, et al.,

Respondents.

On discretionary conflict review of a decision of the Third District Court of Appeal in a direct civil appeal

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PETITIONERS' REPLY BRIEF

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REPLY

I. Recommendations by CIP Can Create Disciplinary Consequences on a Law Enforcement Officer's Career.

The City, through the Civilian Investigative Panel ("CIP") ordinance, Miami, Fla. Code, § 11.5-27, attempted to carve out exceptions and caveats in order to navigate around the preemptive provisions of the Law Enforcement Bill of Rights ("LEOBOR") (Chapter 112) and Criminal Justice Standards and Training Commission ("CJSTC") and the inherent conflicts the ordinance has with the state statutes. The City believes CIP conducts "external investigations," and therefore their investigations are not preempted or conflict with State law. (City, A.B. pg. 1). CIP's purpose is for meaningful review but must have no effect on the officer's career.

But the City and CIP want this Supreme Court to accept that the purpose of its "external" investigation is meant to change policy and behavior, but at the same time have no influence on the Chief of Police or a subject officers' career. This analysis takes place in a vacuum and does not consider the officer is exposed to criminal and civil liability at all times; and, the subject officer's statement can be used against the officer in those legal arenas, and in an administrative setting (such as the officer's performance at CIP could lead to an administrative charge of conduct unbecoming). Any given CIP investigation which results in "recommendations as to the disposition of alleged incidents of police misconduct," turns an "external" investigation into internal consequences for a

subject officer. *See* Miami, Fla. Code, § 11.5-27, (9). It is naive to suggest the recommendations from CIP are "purely advisory." (City, A.B. pg 4). Internal consequences to an officer from any investigation outside the police department is expressly and implicitly preempted and conflicts with LEOBOR and CJSTC.

The City of Miami created and enabled the CIP. Miami, Fla. Code, §11.5-26. It grants the CIP subpoena power to hail witnesses and gather evidence, hire trained investigators, consult its own attorney and the state attorney, and issue reports and recommendations as to the "disposition of alleged incidents of police misconduct, to which the police chief is required to respond." *Id.* §§11.5-27(4), (5), (9). Its express goal is to not interfere with any pending investigation, but it can. The subject officer has to consider after criminal, civil, and internal affairs investigation and review, how can the CIP affect the officer's career. It requires an additional layer of strategic political thinking and maneuvering which byproduct could discredit an officer insofar as the findings of CIP can impair advancement and can expose the officer to questioning of their competence or veracity in criminal or civil matters. Yet, there is no "name clearing" hearing which one of the major purposes of LEOBOR (Chapter 112). Thus, the CIP and LEOBOR have cross purposes; and thus, a conflict. *See generally, State v. Robinson*, 873 So. 2d 1205, 1213 (Fla. 2004) (reputation is not a liberty interest but can stigmatize); *Behrens v. Regier*, 422 F.3d 1255, 1259 (11th Cir. 2005) (stigma plus required prove deprivation of liberty interest).

II. "The Procedure" is the Procedure for Investigation. CIP is Preempted and Conflicts with State Statutes.

There is no express provision in the LEOBOR statute that authorizes Miami's CIP. It expressly carves out review by the Criminal Justice Standards and Training Commission ("CJSTC"). §943.11, Fla. Stat (2016). LEOBOR expressly states: "notwithstanding any other law or ordinance to the contrary." §112.533(1)(a), Fla. Stat. (2016). The CIP argues that that the phrase "which will be the procedure for investigating a complaint against a law enforcement officer...and for determining whether to proceed with disciplinary action or to file disciplinary charges notwithstanding any other law or ordinance to the contrary," allows for the creation of an investigatory body other than by the law enforcement officer's police agency, so long as only the agency can mete out discipline. This position is in keeping with the Third District's conclusion that the "CIP provides a distinct function that is not prohibited by the rights and restrictions set forth under Chapter 112." *D'Agastino v. City of Miami*, 189 So. 3d 236, 242 (Fla. 3d DCA 2016). The Third District explained that the "absence of any authority granted to the CIP to make the sort of police management decisions addressed in Chapter 112, or to affect the obligations that chapter imposes on the Miami Police Department and its investigators, makes manifest the absence of a conflict between the CIP ordinance and Chapter 112." *Id.* at 243. The Third District Court of Appeal is incorrect.

Both theories artificially draw a bright line between the receipt, investigation, and determination of a complaint on the one hand, and the decision as to whether to proceed with disciplinary action on the other. The distinction is simply not borne out by the language of the section 112.531. The title of the section is "Receipt and Processing of Complaints," That title is in Chapter Law 2003-149, placed there by the legislature. The key section is worth repeating:

> Every law enforcement agency and correctional agency shall establish and put into operation a system for **the receipt, investigation, and determination of complaints received by such agency from any person,** which shall be **the procedure** for investigating a complaint against a law enforcement and 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.

(emphasis added).

The statute says that the agency shall establish and put into operation a system for the "receipt, investigation, and determination of complaints…" Surely the decision of whether to proceed with disciplinary action is subsumed in the determination of the complaint and the processing of the complaint. Thus, when the statute says, "which shall be the procedure for investigating a complaint against a law enforcement officer and correctional officer and for determining whether to proceed with disciplinary action or to file disciplinary action or charges, notwithstanding any law or ordinance to the contrary," "the procedure" modifies not only the investigation of a complaint, but

also modifies "determining whether to proceed with disciplinary action to file disciplinary action or charges." All those actions are part of the processing of the complaint. The determination of a complaint has to encompass the decision whether or not to file disciplinary charges.

The CIP asserts the Petitioners' "faulty premise" is that the purpose of the CIP's investigations is to discipline a law enforcement officer. The purpose of the investigation is not relevant. The CIP is not allowed to investigate law enforcement officers regardless of purpose. The CIP is only permitted to make recommendations about policies and procedures but cannot *investigate* individual officers. Section 112.533(1) provides that the "system" for receipt and investigation of complaints shall be "the" procedure "for investigating" a complaint "and" for determining whether to proceed with disciplinary action. Fla. Stat. (2016). In other words, the LEOBOR does not merely provide protection in disciplinary investigations; it establishes the exclusive procedure "for ***investigating*** a complaint" ***and*** for determining whether to proceed with disciplinary action.

The CIP concedes that it is allowed to "recommend" possible dispositions of particular incidents. (CIP, A.B. pg. 7). It can also ". . . propose recommendations to the city manager and police chief regarding allegations of misconduct by any sworn officer of the city police department. Miami, Code, § 11.5-27(5). Both of whom can discipline a subject officer. Regardless of how the CIP wants to limit its purpose to

recommending possible dispositions, the CIP is simply not permitted to investigate a complaint against an officer. The CIP misreads Section 112.533(1)(a) by attempting to limit 112.533(1) to only disciplinary investigations. Fla. Stat. (2016). (*See* CIP, A.B. pg.28).The CIP has it backwards. The system applies to the receipt/investigation/determination of complaints. The discipline, if any, only comes later. The determination of whether to proceed with discipline is not the prerequisite for the protections in Section 112.533(1), including the obligation to forward the complaint. The trigger under Section 112.533(1) is whether a complaint has been brought "against a law enforcement officer," not whether the complaint may ultimately give rise to discipline.

There should only be one procedure for investigation, which is "the procedure." *D'Agastino,* 189 So. 3d at 247 (citing Op. Att'y Gen. Fla. 259 (1981)) (citations omitted). But the City and CIP use different words that suggest the meanings are different, in order to avoid preemption and conflict. The distinctions are meaningless. External investigations are "external" because the City appointed civilians to conduct the investigations rather than the internal affairs division of the police department. But the CIP investigates, can use trained investigators, consult with its own lawyer, and consult with the State Attorney. What is "external" about this investigation? CIP has subpoena power to obtain documents and compel witnesses to testify. One or more of those witnesses will likely be the subject officer, who either must testify or maintain

good faith belief that the testimony provided will incriminate the officer. This could be an admission in a civil case or an administrative setting where the leadership in the department can now say this conduct is unbecoming of an officer. Conduct unbecoming of an officer can subject an officer to discipline and affect that officer's career. But in order to interpret LEOBOR and its protections as inapplicable to CIP investigations, it must be considered "external." There is nothing separate and distinct about the CIP investigation. Its purpose may ostensibly be different, but its affect is oversight and recommendations that affect the governance of the police department and career of individual officers.

The other significant word is "consultation." CIP has the luxury of hiring its own attorney. That attorney will undoubtedly assist the CIP to task investigators to investigate, serve subpoenas, and consult the State Attorney. The State Attorney has a prosecutorial function. *See* §§ 27.01 *et. seq.*, Fla. Stat. (2016). The State grand jury is assisted by the State Attorney. § 905.19, Fla. Stat. (2016). And, by City ordinance, so does CIP. Miami, Fla. Code, §11.5-27(6). If a prosecutor is involved, again, it is naive for an officer to think that CIP is merely for recommendations to the Chief that will have no affect on the subject officer's career. The City and CIP must advocate this interpretation because to do otherwise, would concede CIP is preempted and conflicts with State statute.

In short, it is the Legislature that must carve out another exception in the LEOBOR in order to permit the CIP. The City's crafty ordinance drafting was not clever enough to avoid the preemption and conflict by the current legislation governing the procedure for police investigations.

III. The Title of Senate Bill 1856 – "System" and Specified Carve Outs Apply to all City investigations, not Merely Investigations Involving Discipline.

The CIP cites to the title of SB 1856 emphasizing that the exclusive procedure only applies to "law enforcement and correctional agencies." (CIP, A.B. pg. 3). The CIP overlooks the use of the term "system" for the "receipt, investigation and determination of complaints." That system begins with the receipt of complaints, which are forwarded to the Department. The system does not allow for other investigations by the agency, after the complaint is forwarded to the police agency. The CIP also ignores the fact that Section 112.533(1) specifically carves out the Criminal Justice Standards and Training Commission from this limitation, but does not exclude any City/agency investigative bodies from this limitation. Likewise, Section 112.532(1)(j) provides that notwithstanding the rights and privileges provided in this part, it "does not limit the right of an agency to discipline or to pursue criminal charges against an officer." Again, no explicit carve out is created for City/political subdivision to otherwise investigate or reinvestigate an officer. *See, e.g., Florida Dept. of Revenue v. Florida Mun. Power Agency*, 789 So. 2d 320, 324 (Fla. 2001) (". . . courts cannot judicially

alter the wording of statutes where the Legislature clearly has not done so").

CIP's proposed reading of Section 112.533 requires the Court to rewrite 112.533 by adding the word "also" into the LEOBOR: The CIP argues that entities other than the employing agency may initiate a complaint as long as the complaint is "also" forwarded to the agency. (CIP, A.B. pg. 31). Yet, Section 112.533(1) requires any complaints received or initiated by the political subdivision to be forwarded. Section 112.533(1) does not provide that the political subdivision can investigate after forwarding the complaint. To the contrary, the obligation to forward the complaint specifies that the complaint is forwarded "for review or investigation." Had the legislature intended to permit the political subdivision or entities created by the political subdivision to conduct independent investigations, it would have explicitly said so.

Section 112.533(1)(b)1 broadly defines "political subdivision" as including but not limited to a commission, board, or other local government agency/unit created by law or ordinance. After receipt of a complaint against an officer, the political subdivision is required to forward the complaint "for review or investigation" by the agency. Nowhere is the political subdivision given the authority to reinvestigate the complaint after forwarding it to the agency under 112.533. Rather, it is the agency that is assigned the exclusive authority to review or investigate the complaint under 112.533(1)(b)1.

IV. Investigations of Law Enforcement Officers' Use of Deadly Force is not a Local Issue.

The City contends that CIP involves oversight of a local issue and that local issues are never preempted by State statute. (City, A.B. pg. 16). The City takes a narrow view of the purpose and scope of CIP in order to avoid preemption and conflict analysis. The appearance of *amici curiae* which represent national organizations as articulated in their briefs, clarify investigations of law enforcement officers' deadly use of force is not merely local. It is indeed, statewide, and of national concern.

V. 2004 Attorney General Opinion is Instructive.

The CIP criticizes the Petitioners' reliance on the 2004 Attorney General's opinion from March 24, 2004. (CIP, A.B. pg. 41).[1] The Attorney General's opinion is cited in *Demings v. Orange County Citizens Review Board,* 15 So. 3d 604, 605-06 (Fla 5th DCA 2009). The 2004 Attorney General's opinion is instructive on the issue of preemption of civilian review boards by state statute. "Although an opinion of the Attorney General is not binding on a court, it is entitled to careful consideration and generally should be regarded as highly persuasive." *State v. Family Bank of Hallandale,* 623 So. 2d 474, 478 (Fla. 1993).

The City of Key West, a municipal police department, considered forming a civilian review board. The review board's function would be similar to Miami's CIP

[1] The Attorney General's informal opinion has been provided as an appendix to this reply brief.

function. It considered the city's authority under the Municipal Home Rule Powers Act and whether it was preempted by LEOBOR. It reviewed the 2003 amendment to LEOBOR. The Attorney General concluded: "The plain language of the statute makes the procedures set forth therein the exclusive means to investigate complaints against law enforcement officers. . ." *Id.* at 2. It considered the confidentiality of the in law enforcement officers' investigation by the police agency under Florida Statute Chapter 112 as well as the applicable collective bargaining agreement. *Id.* The Attorney General went so far as to conclude that the existence of a civilian review board would undercut the police union's collective bargaining agreement governing internal investigations and Article I, section 6 of the Florida Statutes governing collective bargaining. *Id.* The Fraternal Order of Police has the same collective bargaining provision. *See* CBA, Section 8, FOP and City of Miami.

VI. Response to Amici.

Respondents' *amici* assume that civilian review boards naturally provide a needed service of civilian oversight of our nation's police departments and law enforcement officers. Whether a good idea or not the preemption and conflict analysis is not policy based; rather it is based upon the above stated preemption analysis. *See Masone v. City of Aventura*, 147 So. 3d 492, 495 (Fla. 2014) (citations omitted) (preemption analysis does not consider merits of policy). This analysis should be

applied regardless of the efficacy of a civilian investigative panel or its perceived need. Although the efficacy and need are not a foregone conclusions.

Furthermore, a civilian investigative panel is merely an additional layer of review subject to the same issues, problems, and criticism of biased analysis just as a law enforcement agency. *See* Smiley, *Miami's police oversight board attorney resigns, will collect $143K,* Miami Herald, Apr. 21, 2015. In theory alone, the purpose of the review panel is for perception of transparency, fairness, and regulating a community's outrage with its police.[2] After an internal affairs investigation is concluded, the investigation becomes public record -- no less so than with the CIP. *See* § 112.532(4)(b), Fla. Stat. (2016).

CONCLUSION

For the foregoing reasons, the decision of the Third District should be overturned and the decision of the Fifth District in *Demings* should be the law in the State. This matter should be remanded to the trial court with instructions to quash the CIP subpoena of D'Agastino, grant his protective order, and declare the invalid provisions of the CIP unconstitutional.

[2] The emergence of police officers wearing cameras and recording encounters undercuts CIP's stated purpose and *amici's* main argument. *See* Smiley, *Hundreds of Miami police officers will wear body cameras,* Miami Herald, Oct. 4, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email to: **Charles C. Mays, Esq.**, Attorney for CIP, 10240 S.W. 144th Street, Miami, Florida 33176 (*ccmays@bellsouth.net*); **Edward Guedes, Esq., John J. Quick, Esq.**, Attorneys for CIP, Weiss Serota Helfman Cole & Bierman, P.L., 2525 Ponce de Leon Boulevard, Suite 700, Coral Gables, Florida 33134 (*jquick@wsh-law.com*); and **Victoria Mendez**, City Attorney and **John Greco, Esq.**, Deputy City

Attorney, Attorney for City of Miami, Miami Riverside Center, Suite 945, 444 S.W. 2nd Avenue, Miami, Florida 33130-1910 (*jagreco@miamigov.com*).

Dated: October 24, 2016.

__/s/ Robert Buschel_____
Robert C. Buschel

CERTIFICATE OF COMPLIANCE

WE HEREBY CERTIFY that this brief is in Times New Roman 14 Point Font and is in compliance with Rule 9.210, Fla. R. App. P.

__/s/ Robert Buschel_____
Robert C. Buschel

State of Florida
Office of the Attorney General

Informal Legal Opinion

Number: INFORMAL
Date: March 22, 2004
Subject: Law Enforcement Officers' Bill of Rights

Mr. Robert Cintron, Jr.
General Counsel, Citizen Review Board
City of Key West
Post Office Box 1946
Key West, Florida 33040

RE: LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS--LAW ENFORCEMENT OFFICERS–MUNICIPALITIES–PUBLIC RECORDS–provisions in Part VI, Ch. 112, Fla. Stat., exclusive manner to investigate complaints against law enforcement or correctional officers. ss. 112.532 and 112.533, Fla. Stat.

Dear Mr. Cintron:

This is in response to your request for an opinion as to whether the City of Key West may create a citizen review board (CRB) with the authority to receive, investigate and make recommendations regarding complaints of police officer misconduct independent of the internal affairs procedures established by the City of Key West Police Department pursuant to section 112.533(1), Florida Statutes. You also ask whether such a board would be subject to the confidentiality provisions and public records exemptions set forth in section 112.533(2)(a), Florida Statutes, when the CRB receives complaints directly from the complaining party. If the CRB may not function so, you ask whether it may receive complaints for the sole purpose of forwarding them to the police department. Finally, you question whether the provisions of a collective bargaining agreement between the City of Key West and the Florida Police Benevolent Association controlling over inconsistent or conflicting provisions of the city's charter.

You state that the charter for the City of Key West was amended by referendum in November 2002 to create a Citizens Review Board composed of seven volunteer members appointed by the Key West City Commission. The charter authorizes the CRB to receive written complaints regarding police officer misconduct and to conduct investigations independently from the police department or the state attorney. You question the city's authority under the Municipal Home Rule Powers Act, Chapter 166, Florida Statutes, to create such a board.

Initially, I would note that this office must presume the validity of properly enacted ordinances and charters. Moreover, your question necessarily involves commenting upon the actions of the city and, absent a request from the City of Key West, this office may not offer an opinion as to whether such action is proper. Generally, however, the following comments are provided.

Part VI of Chapter 112, Florida Statutes, commonly referred to as "The Police Officers' Bill of Rights" or "The Law Enforcement Officers' Bill of Rights,"[1] is designed to ensure certain rights for law enforcement and

correctional officers.[2] When a law enforcement officer or correctional officer is subject to interrogation by members of the employing agency for any reason that could lead to disciplinary action, demotion, or dismissal, the interrogation must be conducted under the conditions prescribed by the statute.[3]

While section 112.532(2), Florida Statutes, sets forth the requirements for the composition of a complaint review board, the statute does not address when or how such boards should function.[4] Section 112.533(1), Florida Statutes, however, states:

"Every law enforcement agency and correctional agency shall establish and put into operation a system for the receipt, investigation, and determination of complaints received by such agency from any person, *which shall be the procedure for investigating a complaint against a law enforcement and 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. This subsection does not preclude the Criminal Justice Standards and Training Commission from exercising its authority under chapter 943.* " (e.s.)

The emphasized language above was added to section 112.533(1), Florida Statutes, in 2003.[5] The plain language of the statute makes the procedures set forth therein the exclusive means to investigate complaints against law enforcement officers and correctional officers and for determining whether to proceed with disciplinary action or to file disciplinary charges, regardless of other laws or ordinances to the contrary.[6] Where the Legislature has prescribed the manner in which something is to be done, it operates, in effect, as a prohibition against its being done in any other manner.[7] Moreover, this office has previously concluded in Attorney General Opinion 97-62 that no legislative action by a municipality may contravene, repeal or modify a preexistent civil service law, charter act, or general or special law affecting the rights of municipal employees, including municipal police officers.[8]

Section 112.533, Florida Statutes, also provides:

"A complaint filed against a law enforcement officer or correctional officer with a law enforcement agency or correctional agency and all information obtained pursuant to the investigation by the agency of such complaint shall be confidential and exempt from the provisions of s. 119.07(1) 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, either personally or by mail, that the agency has either:
1. Concluded the investigation with a finding not to proceed with disciplinary action or to file charges; or
2. Concluded the investigation with a finding to proceed with disciplinary action or to file charges."

Notwithstanding the foregoing provisions, the officer who is the subject of the complaint, along with legal counsel or any other representative of his or her choice, may review the complaint and all statements regardless of form made by the complainant and witnesses immediately prior to the beginning of the investigative interview. If a witness to a complaint is incarcerated in a correctional facility and may be under the supervision of, or have contact with, the officer under investigation, only the names and written statements

of the complainant and nonincarcerated witnesses may be reviewed by the officer under investigation immediately prior to the beginning of the investigative interview.[9]

The statute also states that notwithstanding the confidentiality provisions of the statute, the complaint and information is available to law enforcement agencies, correctional agencies and state attorneys for purposes of conducting lawful criminal investigations.[10] Other than the law enforcement officer or correctional officer who is the subject of the complaint, no other outside entity is recognized as privileged to the complaint or information until the employing law enforcement agency makes a final determination whether to issue a notice of disciplinary action.[11] In Attorney General Opinion 97-62, discussed above, this office concluded that the confidentiality requirements of Part VI, Chapter 112, Florida Statutes, prevent the participation of a citizens' board in the resolution of a complaint against a law enforcement officer until the officer's employing agency has made its initial findings.

There does not appear to be any provision for a citizens complaint review board to utilize the investigation procedures contained in Part VI, Chapter 112, Florida Statutes, and avail itself of the confidentiality provisions contained therein.

In light of the discussion and conclusions in Questions One and Two, it would appear that there is no statutory authorization for a citizens review board to operate as the receiving entity for complaints against law enforcement officers under Part VI, Chapter 112, Florida Statutes.

Section 447.309(1), Florida Statutes, recognizes that agents for a certified employee organization and the chief executive officer of a public employer may bargain collectively to determine wages, hours, and terms and conditions of employment of the public employees within the bargaining unit. Any collective bargaining agreement reached by the negotiators must be reduced to writing and signed by the chief executive officer and the bargaining agent. The signed agreement, however, is not binding on the public employer until it has been ratified by the public employer and by the public employees who are members of the bargaining unit. Subsection (3) of section 447.309, Florida Statutes, places a further restriction on collective bargaining agreements, stating:

"If any provision of a collective bargaining agreement is in conflict with any law, ordinance, rule, or regulation over which the chief executive officer has no amendatory power, the chief executive officer shall submit to the appropriate governmental body having amendatory power a proposed amendment to such law, ordinance, rule, or regulation. Unless and until such amendment is enacted or adopted and becomes effective, the conflicting provision of the collective bargaining agreement shall not become effective."

In *Hillsborough County Governmental Employees Association v. Hillsborough County Aviation Authority* ,[12] the Supreme Court of Florida considered whether a civil service board's refusal to amend its rules in order to comply with a collective bargaining agreement would unconstitutionally abridge employees' rights to collectively bargain. The court concluded that section 447.309(3), Florida Statutes, would violate Article I, section 6 of the Florida Constitution guaranteeing the right to collective bargaining for public employees, if it were interpreted to allow a civil service board to veto conflicting collective bargaining agreement provisions that have been negotiated by the public employer and the certified employee organization.

The Court, however, noted specifically that its holding did not apply "to conflicts arising between collective bargaining agreements and statutes or ordinances."[13] This office has not found, nor have you provided, a subsequent court case in which this conclusion has been altered.

I trust that these comments will be of assistance in resolving these issues.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk

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[1] *See, e.g., Mesa v. Rodriguez* , 357 So. 2d 711 (Fla. 1978) and *Ragucci v. City of Plantation* , 407 So. 2d 932 (Fla. 4th DCA 1981).

[2] *See* s. 112.532, Fla. Stat., stating that "[a]ll law enforcement officers and correctional officers employed by or appointed to a law enforcement agency or a correctional agency shall have the following rights and privileges[.]"

[3] Section 112.532(1), Fla. Stat.

[4] As recognized by this office in Attorney General Opinion 97-62, the courts and the Office of the Attorney General have expressed frustration over the absence of any legislative direction regarding the type of system required by s. 112.533, Fla. Stat., and the Legislature's failure to specify procedures to carry out the statutory responsibility delegated by the statute. *See, e.g., Ujcic v. City of Apopka* , 581 So. 2d 218 (Fla. 5th DCA 1991); Op. Att'y Gen. Fla. 76-38 (1976); Inf. Op. of February 28, 1997, to Chief Dennis R. White.

[5] *See* s. 2, Ch. 2003-149, Laws of Fla.

[6] *See also* title to Chapter 2003-149, Laws of Fla., stating that the act "provid[es] that an established system for the receipt, investigation, and determination of complaints shall be the exclusive procedure used by law enforcement and correctional agencies[.]"

[7] *See Alsop v. Pierce* , 19 So. 2d 799, 805 (Fla. 1944) (where Legislature prescribes the mode, that mode must be observed).

[8] *See* Ops. Att'y Gen. Fla. 86-91 (1986) and 76-38 (1976); *Ragucci v. City of Plantation, supra.*

[9] Section 112.533(2)(a), Fla. Stat.

[10] Section 112.533(2)(c), Fla. Stat.

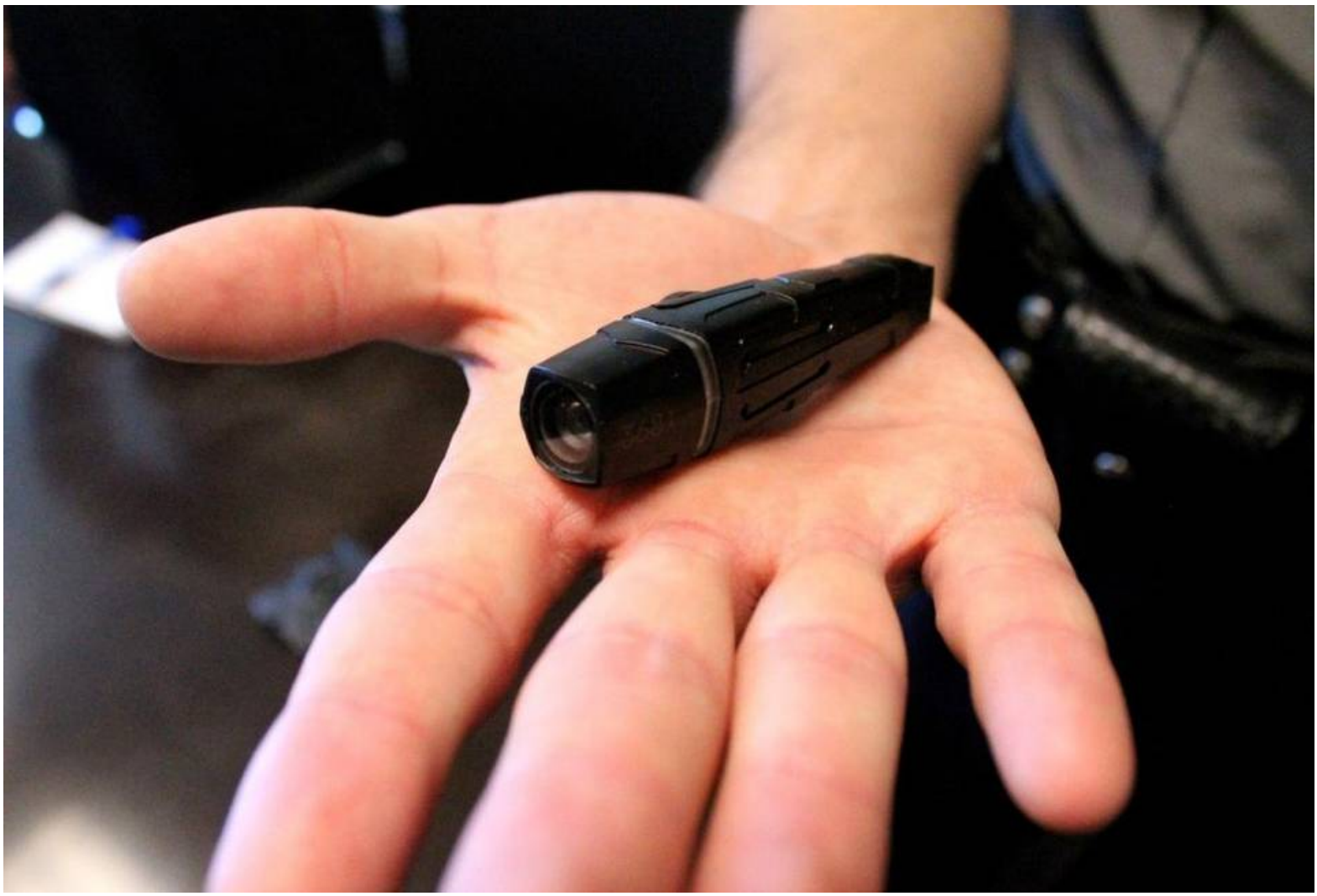
[11] *See* s. 112.532(4)(b), Fla. Stat.

[12] 522 So. 2d 358 (Fla. 1988).

[13] 522 So. 2d *at* 362.

MIAMI-DADE COUNTY OCTOBER 4, 2016 10:14 AM

Hundreds of Miami police officers will wear body cameras



BY DAVID SMILEY
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About half of Miami's 1,300-member police department will be equipped with body cameras by 2019, the city has announced.

With tensions flaring once again around the country over officer-involved shootings, Miami police received a $960,000 grant from the U.S. Department of Justice to fund the purchase and use of police cameras. The city secured the grant last week in part by pledging $400,000 of its own money.

The money, according to Miami's 2017 budget, will pay "for the purchase of 640 body worn cameras, uploading of equipment, digital storage, and technicians to handle the management, retrieval, redaction and release of digital media for the department." Miami police already own around 100 Taser cameras, purchased more than a year ago as part of a pilot program.

"I think in the end, it will help our internal affairs clearance rate, only because you'll have a bulk of the uniformed force on video," said Police Chief Rodolfo Llanes, who said the cameras help document police interactions but aren't perfect. "It's not a panacea. Everything isn't going to be captured."

> **"IT'S NOT A PANACEA.**
> Police Chief Rodolfo Llanes

Llanes also said that, the city's announcement notwithstanding, he's looking to buy around 450 to 500 cameras. He said the purchase will likely have to go through a competitive process, so it's difficult to say exactly how many cameras the city will buy, or from which vendor

With the wide-scale roll-out of additional cameras, Miami becomes the latest South Florida department to embrace the newly popular but polarizing equipment. Miami-Dade County agreed in March to purchase up to 1,500 cameras, and said Monday that 1,132 officers are wearing the cameras. Miami Beach announced last month that they are planning to more than double the officers, currently 101, wearing cameras.

The growing move to videotape police interaction with the public comes amid renewed tensions over police shootings across the country, including North Carolina, where Keith Lamont Scott was shot last month. In North Miami, where the shooting of unarmed behavioral therapist Charles Kinsey garnered national attention, the city has just allocated $125,000 to purchase cameras.

The hope in increasing the use of body cameras is that recording interactions between police and the public will decrease the number of altercations and help provide objective evidence in the event a confrontation does occur. The federal government's Bureau of Justice Assistance awarded

Miami the grant as part of a $20 million investment in body cameras in order to increase "transparency and ensure accountability."

Last week, Cambridge University published a study of police departments in the United Kingdom and California that found a 93 percent decrease in the number of complaints against officers wearing body cameras. In Miami, Llanes said he's seen mixed results.

Llanes has seen the footage exonerate a wrongly accused officer and substantiate a complaint. But in some cases, he said officers forget to turn on their cameras, or the video footage fails to capture an incident. A study released in August also criticized the department's procedures for using the technology.

"It's not fool-proof," Llanes said.

When Miami first rolled out its pilot program two years ago, its police union criticized its implementation as "reckless." But Union president Lt. Javier Ortiz said he now supports the increase of cameras. His only concerns, he said, are the rules behind the cameras' use and the money involved, particularly when it comes to paying for technicians to manage the data and hardware to store it.

"Not only does it increase the public trust, but at the same time it will give the [union] the option that, in the event someone puts a false allegation out against one of our officers to smear their reputation and career, we'll be able to come after them for perjury," he said.

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Miami's police oversight board attorney resigns; will collect $143K

BY DAVID SMILEY
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The embattled attorney for the civilian agency that oversees Miami's police department has resigned, and he's leaving with a six-figure sendoff.

Charles Mays tendered his resignation Friday and signed a "release of all claims" agreement that was finalized late Monday. The city-funded agency will pay him $142,582 over the next six months, and in return Mays has agreed not to sue. He leaves following months of racially tinged rancor that split the agency's 13-member board, pitted Mays against the agency's executive director, and led to an inquiry into whether the long-serving attorney had usurped authority and stonewalled important cases.

Mays was cleared of wrongdoing in the fall following an exhaustive review by a committee of city commission appointees. But friction between Mays, some on the board and Executive Director Cristina Beamud remained, so Mays resigned after the agency promised to pay most the money left on his contract.

"I am going to miss you all. I wish you all the best. And it's a wonderful feeling," Mays said Tuesday after announcing his resignation to the agency's board at Miami City Hall.

Voters overwhelmingly approved the creation of the civilian agency in 2001 following a series of fatal police shootings of black men and the indictment of 13 cops accused of covering up problematic shootings by planting "throw-down" guns on suspects. Four years later, Mays, a former assistant Miami city attorney who played a role in the negotiation of the controversial $7 million fire fee settlement of the late 2000s, was hired as the agency's general counsel.

Mays' buyout states that he was to receive $62,582 within two weeks of his resignation, and another $80,000 by Oct. 15. — even though his contract allowed Miami City Attorney Victoria Méndez to fire him without severance. Méndez, who previously said she didn't support a buyout, told the Herald that she wouldn't fire Mays because he was cleared by the commission-appointed review committee, and the Civilian Investigative Panel board never voted to fire him.