

Minutes
MINNEAPOLIS CIVILIAN POLICE REVIEW AUTHORITY
Wednesday, April 7, 2004
Room 135 Grain Exchange
6:30 p.m.

Board Members Present: Blackshaw, Friedman, Hooker, Mayo, Velez, Weinbeck,
Zimmerman
Also Present: CRA Manager Barbara Damchik-Dykes, Assistant City Attorney
Scott Reeves, Ann Walther, Victor Escovina

**Excerpt from the Minneapolis Civilian Police Review Authority Board Meeting
Minutes of April 7, 2004**

IV. Business

3) Update on bill to criminalize false allegations of police misconduct

At its March 3rd meeting, the Board passed a resolution to oppose SF1727 and HF1661 and to seek the assistance of the Intergovernmental Relations Committee in defeating the bills at the legislature. Friedman wrote a letter to Council Member Benson, Chair of the IGR. Friedman was asked to testify before IGR committee. Friedman was questioned about the Board's rationale for their resolution.

The status now is that the Senate and House no longer have the same bill. The Senate changed its bill. The new bill is included in attachment #4. Members can compare it with the House bill (also attached). The Senate bill takes away any criminal penalties specific to police misconduct allegations and states it does not apply to a report of police misconduct. The IGR Committee postponed discussion because they wanted an update on what the Senate did. They have asked Friedman to present to the committee again on Tuesday, April 13. Council Member Goodman expressed interest in learning the opinions of Board members other than Friedman. Therefore, Friedman has chosen to bring it back to the Board. Friedman asked for discussion and a vote to reaffirm support.

Weinbeck asked if the Board would consider a motion to support SF 1727 as opposed to affirming an earlier vote.

Friedman does not believe it's the CRA's job to comment on a bill that has nothing to do with police misconduct except to say that the Board urges the City Council to either lobby for the Senate version of the twin bills to prevail or for neither bill to prevail. The CRA does not have direct stake in the outcome of whether the Senate bill passes, but the CRA does have a direct stake in whether the House bill passes. If the City wants to lobby for the Senate bill as a way of accomplishing that, the CRA has no objection. If the Board states it is in favor of SF 1727, it is presuming an interest in something that doesn't relate to the CRA.

Hooker asked if the Board wishes to state its opposition to HF 1661 and make no mention of the Senate bill.

Blackshaw and Mayo voiced their agreement with Hooker. Since the CRA Board has no stake in the Senate bill, it makes no sense to comment one way or another other than voicing opposition to the House bill.

Friedman said that in his presentation to the IGR, he will have to reference what happened to the Senate bill. He will just say the Board has no opinion about it.

Friedman **MOVED** the Board re-vote on the issue of whether the it supports going to the IGR committee and raising objections to HF 1661 and urging the Council to lobby against it at the state level. The motion was seconded by Mayo.

ADOPTED UNANIMOUSLY

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Attachment #4

Dear Council Member Benson,

At our most recent meeting, the Civilian Review Board passed a resolution opposing companion bills in the legislature: HF 1661 and S 1727. The twin measures each make it a crime to falsely report police misconduct.

It bears noting that before the CRA investigates an allegation of police misconduct, the individual must sign a formal complaint under penalty of perjury. Similarly, when an investigator interviews a police officer, the latter's statement is also signed as true under penalty of perjury. To my knowledge, and to the knowledge of the City Attorney assigned to our office, on no occasion has a perjury prosecution been taken up against either a complainant or a police officer that derived from a CRA complaint.

The proposed bills only create a potential crime against one party, the complainant. They appear designed to discourage an aggrieved party from going forward with a complaint. Minneapolis residents need to know that if they witness or feel victimized by an incident that seems to them police misconduct, they will not be slapped with a criminal charge if they are mistaken. Good relations between the police and the community are dependant on some kind of process for the citizens to raise their concerns without the fear of consequences for doing so. One is not criminalized for filing suit against a Minneapolis police officer and losing in court; there is no rational basis for potentially criminalizing those who take the lesser step of beginning a disciplinary complaint.

There are other arguments that could be made, but the Board didn't authorize a specific basis for opposing the bills. Undoubtedly, members of the Council will advance their own reasons. We urge the IGR Committee to bring to the full council a resolution opposing these bills, and that you will then take the city's opposition to the state level.

Please feel free to call if you request more information.

Sincerely,

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Michael Friedman
Chair, Minneapolis Civilian Review Board
(612) 337-0030 (Work number)

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MINNEAPOLIS CIVILIAN POLICE REVIEW AUTHORITY
400 South Fourth Street, Suite 1004
Minneapolis MN 55415-1424
(612) 673-5500

3/21/04

Senator Leo Foley
Chair, Crime Prevention and Public Safety Committee
Minnesota Legislature

Re: SF 1727

Dear Mr. Foley,

I regret that I will be unable to attend the hearing scheduled for 3/22/04 and pertaining to SF 1727. On that day, I am scheduled to participate in the presentation of the Civilian Review Board's quarterly report to the Minneapolis City Council. Please accept this letter as testimony for your committee's consideration.

At our March 3rd meeting, the Board of the Minneapolis Civilian Police Review Authority passed a resolution opposing SF 1727. While no one should condone lying to bodies which investigate police officers for misconduct, whether the source of such misinformation be a police officer or a member of the public, and whether the destination for such information be the MCPRA or any police department's Internal Affairs Unit, we believe the proposed law oversteps its purpose to the point of having a chilling effect on the public's right to bring complaints to an oversight body. In doing so, it potentially harms the mutual trust necessary for good relationships between police agencies and the communities who employ them.

Simply put, it should be the democratic right of any state resident to make a complaint against any state worker, including police officers, without fear of retaliation, whether that retaliation originates from the accused officer directly, or indirectly through prosecutors who work in close partnership with police.

If this bill passes, what incentive would a person have to file a legitimate complaint? People who believe they are a witness to actual misconduct might like to bring it to the attention of a Police Chief or another oversight body, but if the sole reward for filing a complaint is simply being a good citizen, why take the risk of being criminally cited? Ironically, the bill will only encourage victims of police misconduct to more frequently investigate the option of civil legal action, as that will become a less risky course than the lesser step of making a

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disciplinary complaint. (The state can't criminalize someone for filing a lawsuit that doesn't prevail.)

I am fully aware of the counter argument: the law only forbids *false* allegations. But who, typically, will get to issue citations for violations of this law? The very same law enforcement agencies that have their officers accused of wrongdoing. Accusations of coverups already abound whenever investigations into complaints fail to produce consequences. Allowing criminal charges against the complainant in those kinds of cases is only going to lead to the appearance, or reality, that the choice to prosecute was part and parcel of the coverup.

I don't know if the Minneapolis Police Department, or its union, has contributed to the discussion of this bill. It might surprise you that what I've heard expressed would suggest that each has reason to oppose this bill. The MPD's response to community criticism has, in part, focused on trying to help citizens become more knowledgeable about what police are legally allowed to do, especially in regard to the application of force. If the public is presumed to be generally uneducated about laws pertaining to police practices, should genuinely misinformed community members be subject to criminal prosecution because their ignorance of law is not believed?

And the Minneapolis Police Federation, in defense of data privacy rules, insists that police officers should be treated the same as all state workers. As there is no criminal penalty for falsely complaining about a teacher, the ethics of a legislator, or any other state worker, maintaining this equal treatment would require the defeat of the proposed bill.

If the legislature chooses to disregard all the aforementioned arguments, and truly believes that police officers are a special category of state worker when it comes to public complaints, then a necessary corollary to the proposed bill would be a modification of the state's data privacy laws to allow all complaint data against officers to be subject to public scrutiny. Failure to do so would mean the proposed bill would allow the prosecution of state residents with secret (i.e. non-public) evidence. This is not the means for Minnesotans to achieve greater confidence in the police officers who serve us.

Sincerely,

Michael Friedman
Chairperson, Civilian Review Board
MCPRA

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H.F No. 1661, 1st Engrossment: 83rd Legislative Session (2003-2004) Posted on Feb 12, 2004

- 1.1 A bill for an act
1.2 relating to crimes; prohibiting falsely reporting
1.3 police misconduct; providing penalties; amending
1.4 Minnesota Statutes 2002, section 609.505.
1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
1.6 Section 1. Minnesota Statutes 2002, section 609.505, is
1.7 amended to read:
1.8 609.505 [FALSELY REPORTING CRIME.]
1.9 Subdivision 1. [FALSE REPORTING.] Whoever informs a law
1.10 enforcement officer that a crime has been committed or otherwise
1.11 provides false information to an on-duty peace officer regarding
1.12 the conduct of others, knowing that it is false and intending
1.13 that the officer shall act in reliance upon it, is guilty of a
1.14 misdemeanor. A person who is convicted a second or subsequent
1.15 time under this section is guilty of a gross misdemeanor.
1.16 Subd. 2. [REPORTING POLICE MISCONDUCT.] (a) Whoever
1.17 informs, or causes information to be communicated to, a public
1.18 official, as defined in section 609.415, subdivision 1, or an
1.19 employee thereof, whose responsibilities include investigating
1.20 or reporting police misconduct, that a peace officer, as defined
1.21 in section 626.84, subdivision 1, paragraph (c), has committed
1.22 an act of police misconduct, knowing that the information is
1.23 false, is guilty of a crime and may be sentenced as follows:
1.24 (1) up to the maximum provided for a misdemeanor if the
1.25 false information does not allege a criminal act; or
2.1 (2) up to the maximum provided for a gross misdemeanor if
2.2 the false information alleges a criminal act.
2.3 (b) The court shall order any person convicted of a
2.4 violation of this subdivision to make full restitution of all
2.5 reasonable expenses incurred in the investigation of the false
2.6 allegation unless the court makes a specific written finding
2.7 that restitution would be inappropriate under the circumstances.
2.8 Sec. 2. [EFFECTIVE DATE.]
2.9 Section 1 is effective August 1, 2004, and applies to
2.10 crimes committed on or after that date.
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Minnesota Senate

[House](#) | [Senate](#) | [Legislation & Bill Status](#) | [Laws, Statutes & Rules](#) | [Joint Depts. & Commissions](#)

KEY: ~~stricken~~ = old language to be removed
underscored = new language to be added

NOTE: If you cannot see any difference in the key above, you **need to** [change the display](#) of stricken and/or underscored language.

[Authors and Status](#) ■ [List versions](#)

S.F. No. 1727, 1st Engrossment: 83rd Legislative Session (2003-2004) Posted on Mar 31, 2004

- 1.1 A bill for an act
1.2 relating to crimes; prohibiting providing false
1.3 information to police; providing penalties; amending
1.4 Minnesota Statutes 2002, section 609.505.
1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
1.6 Section 1. Minnesota Statutes 2002, section 609.505, is
1.7 amended to read:
1.8 609.505 [~~FALSELY REPORTING CRIME; PROVIDING FALSE~~
1.9 INFORMATION.]
1.10 Subdivision 1. [~~FALSE REPORTING.~~] Whoever informs a law
1.11 enforcement officer that a crime has been committed, knowing
1.12 that it is false and intending that the officer shall act in
1.13 reliance upon it, is guilty of a misdemeanor. A person who is
1.14 convicted a second or subsequent time under this section is
1.15 guilty of a gross misdemeanor.
1.16 Subd. 2. [~~FALSE INFORMATION.~~] (a) Except as provided in
1.17 subdivision 1 and unless a more severe penalty is imposed
1.18 elsewhere in law, whoever provides false information about
1.19 another person to a law enforcement officer knowing that it is
1.20 false, intending that the officer shall act in reliance upon it,
1.21 and intending to obstruct justice, is guilty of a gross
1.22 misdemeanor. A person who is convicted a second or subsequent
1.23 time under this section is guilty of a felony and may be
1.24 sentenced to imprisonment for not more than two years or to
1.25 payment of a fine of not more than \$4,000, or both.
2.1 (b) Paragraph (a) does not apply to a report of police
2.2 misconduct.
2.3 Sec. 2. [~~EFFECTIVE DATE.~~]
2.4 Section 1 is effective August 1, 2004, and applies to
2.5 crimes committed on or after that date.
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-----Original Message-----

From: Michael Friedman [SMTP:civilianreviewboard@yahoo.com]
Sent: Friday, April 02, 2004 8:39 PM
To: sen.leo.foley@senate.mn
Subject: SF 1727

Dear Senator Foley,

For most of last week the state server was overloaded and, as a result, I did not see the amendments to SF 1727 until today.

Though your staff didn't personally respond to my letter in opposition to the prior version of that bill, the changes well reflect the concerns I raised, and I pass on my thanks to you and whoever else within your committee made that possible.

If there's any role for the public in negotiations between the two legislative branches on companion bills, and I can be of help in defending SF 1727 as it now stands against HF 1661, please let me know.

An unrelated coincidence is that my wife is a physician active in the coalition that actively is supporting passage of your health care bill (which also cleared committee).

She and I both now have reason to greatly appreciate your political leadership.

Sincerely,

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Michael Friedman
Chair, Minneapolis Civilian Review Board
(612) 337-0030 (Work number)

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-----Original Message-----

From: Michael Friedman [SMTP:civilianreviewboard@yahoo.com]
Sent: Friday, April 02, 2004 8:25 PM
To: Benson, Scott A
Cc: Damchik-Dykes, Barbara J
Subject: IGR Follow Up

Council Chair Benson,

If staff has not already informed you, I wanted to let you know that the Senate Committee's amendments to SF 1727 represent a substantial change and no longer would be a bill of concern to the CRA. However, the House version, HF 1661, retains the original language.

Therefore, when I present before your committee next time, the issue will have changed to having city lobbyists express a preference for SF 1727 as compared to the counterpart bill in the house.

I very much appreciate the expediency by which you and your staff encouraged my participation before your committee. You can be assured that next time I will plan to read a brief (prepared in writing) statement so that your meeting time is made more efficient.

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Michael Friedman
Chair, Minneapolis Civilian Review Board
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