NATIONAL URBAN LEAGUE

LAW ENFORCEMENT OFFICER BILL OF RIGHTS SUMMARY

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Law Enforcement Officer Bill of Rights Summary: Arizona

Arizona's Peace Officers Bill of Rights, Ariz. Rev. Stat. § 38-1101, *et seq.*, has undergone several revisions, most recently in 2019:

- In 2011, S.B. 1235 amended the Peace Officers Bill of Rights by adding what is now Ariz. Rev. Stat. § 38-1104, which requires that if disciplinary action is sought after the investigation, the officer is provided with information regarding discipline of other LEOs of similar rank/experience for same/similar violations before the hearing can be held. S.B. 1235 also amended what is now § 38-1106(F), which permits an LEO to request a different hearing officer or administrative law judge ("ALJ") to conduct a disciplinary appeal hearing; the amendment specified that a party's first such request will be granted as a matter of right (*see* discussion below in "Limits Discipline"). S.B. 1235 also added what is now § 38-1111, regarding critical incident stress management team members, discussed below in "Limits Discipline."[1]
- In 2012, S.B. 1186 amended what is now § 38-1107 of the statute to clarify that an officer terminated in opposition to the board's decision can obtain a de novo hearing at the superior court if the board found that the termination had no "just cause." Previously, the LEO could bring action in superior court based on his or her subjective belief that there was no "just cause" for the termination. The revision also added a section pertaining to examinations for fitness for duty. [2]
- In 2013, H.B. 2442 applied the statute's fitness for service examination section to probation officers.[3]
- In 2014, H.B. 2562 amended the statute in several substantive ways, including requiring that the employer provide the investigated officer with a copy of a hearing transcript within ten days of receiving the transcript (now § 38-1106(C)), providing that hearings will be open to the public (now § 38-1106(I)), providing for retroactive compensation to an LEO who prevails on appeal (now § 38-1106(J)), allowing "demoted" (not just "terminated") officers to obtain superior court review of their disciplinary action (now § 38-1107(A)), requiring that superior court review begin within 35 days of service of the decision (now § 38-1107(A)), providing for the exclusion of information regarding an investigation from publicly available section of personnel files until investigation has completed, including appeals (now § 38-1109), and adding the 180-day limit on LEO disciplinary actions (now § 38-1110(A)).
- In 2016, S.B. 1521 provided in § 38-1106(J) that an officer who wins an appeal of termination "shall" (no longer "may") be awarded retroactive compensation, and added whether the hearing officer/ALJ/appeals board found the LEO's action warranted suspension or demotion, rather than termination, as a factor to consider in reducing the retroactive compensation.[4]

[1] 2011 Ariz. Legis. Serv. Ch. 230 (S.B. 1235), pp. 5, 6-7 (West).
[2] 2012 Ariz. Legis. Serv. Ch. 355 (S.B. 1186), pp. 10, 12-13 (West).
[3] 2013 Ariz. Legis. Serv. Ch. 201 (H.B. 2442) pp. 1-3 (West).
[4] 2016 Ariz. Legis. Serv. Ch. 318 (S.B. 1521) p. 5 (West).

- In 2017, S.B. 1253 added the requirement that an officer be read a statement before viewing body cam footage (now Ariz. Rev. Stat. § 38-1116(A)(1)-(2), discussed in Body Cam Footage, below).
- In 2018, S.B. 1260 amended what is now § 38-1104(A)(1) to permit the officer's attorney or representative to take notes during the interview to assist the officer.[5]
- In 2019, H.B. 2634 amended what is now § 38-1104(A)(2) to provide that the LEO's employer must provide the officer with a copy of the written notice for the officer to keep, as well as "any relevant and readily available materials." The bill also added § 38-1104(A)(3), which permits the investigated LEO to record his or her own interview during an administrative investigation.[6] (*See* discussion in "Unfair Access to Information," below.)

Arizona's Peace Officers Bill of Rights has received the following recent media coverage:

- In 2015, State Sen. Sylvia Allen (R-Snowflake) sought to expand the Peace Officer's Bill of Rights with S.B. 1467, which would have given accused officers 14 days to prepare a response before a disciplinary action is taken against an officer. Sen. Allen was motivated after her son-in-law, a corrections officer, was investigated for misconduct.[7]
- In 2017, Jim Mann, the Executive Director of the Fraternal Order of Police Arizona Labor Council, wrote an op-ed in which he justified the addition of Ariz. Rev. Stat. § 38-1116(A)(1)-(2), which requires an investigated officer be read a statement before viewing body cam footage, by explaining that because of digital video compression, a body camera may appear to record continuous activity, creating "the illusion of increased levels of force that didn't exist." He also pointed out that the provision does not apply to criminal investigations.[8]
- In the 2020 legislative session, Sen. David Livingston proposed S.B. 1333 which would have expanded the Peace Officers' Bill of Rights by giving investigated officers 24 hours of notice before they can be interviewed (unless immediate action is required "to preserve evidence"), which opponents argued would give the officers an opportunity to "get their stories straight"; granting discipline appeal boards subpoena power, which would undermine civilian oversight; and prohibiting investigators from lying about evidence they do not actually have, an interrogation tactic police use against civilian suspects routinely.[9] The bill failed.[10]

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[5] 2018 Ariz. Legis. Serv. Ch. 216 (S.B. 1260), pp. 1, 3 (West).
[6] 2019 Ariz. Legis. Serv. Ch. 110 (H.B. 2634), p. 3 (West).
[7] Mary Jo Pitzl, *Son-in-law's work woes spur senator's law-enforcement bill*, Arizona Republic (Mar. 19, 2015).
[8] Jim Mann, Executive Director of Fraternal Order of Police Arizona Labor Council, *With police body camera footage, there is more or less than meets the eye*, Arizona Capitol Times (Mar. 8, 2017), https://azcapitoltimes.com/news/2017/03/08/with-police-body-camera-footage-there-is-more-or-less-than-meets-the-eye/.

[9] Maria Polletta, *Arizona law enforcement officers accused of misconduct could get additional protections*, Arizona Republic (Jan. 31, 2020), https://www.azcentral.com/story/news/politics/arizona/2020/01/31/arizona-legislature-david-livingston-proposes-senate-bill-officers-accused-misconduct/4603081002/.

[10] https://apps.azleg.gov/BillStatus/BillOverview?SessionID=123.

The Arizona statute includes the following problematic provisions:

Restrictions on Interrogation Procedures:

- Officer under investigation can have a representative present during interview (in addition to an attorney) who is from the same agency or from the LEO's union. The representative can observe and take notes. LEO can take reasonable breaks for limited duration to consult with an attorney or other "authorized persons." Ariz. Rev. Stat. § 38-1104(A). LEOs who are witnesses in a disciplinary proceeding may also have a representative present during the interview, who may also take notes. Ariz. Rev. Stat. § 38-1105(A).

Time Limits on Disciplining Officers:

- Agency must make a good faith effort to complete an investigation of LEO misconduct within 180 days and must provide LEO a written explanation if the investigation goes longer. On appeal, a finding that the agency did not make a good faith effort to complete the investigation in 180 days is the basis for dismissal or no discipline. Ariz. Rev. Stat. § 38-1110(A), (C). Notably, the time limit is suspended during a pending criminal investigation or prosecution regarding the alleged misconduct. Ariz. Rev. Stat. § 38-1110(B)(1).

Officers Have Unfair Access to Information:

- Officers are given information civilians do not have before being interrogated: including written notice containing "the alleged facts that are the basis of the investigation, the specific nature of the investigation, the officer's status in the investigation, all known allegations of misconduct that are the reason for the interview and the officer's right to have a representative present at the interview"; "any relevant and readily available materials, including complaints that contain the alleged facts" (except for internal harassment or discrimination complaints). Ariz. Rev. Stat. § 38-1104(A)(2).
- The officer is also permitted to record his/her interview and may make a 5-minute closing statement at the end of the interview after consulting with attorney/representative. Ariz. Rev. Stat. § 38-1104(A)(3)-(4).
- If the officer is required to take a polygraph, he/she is provided with a complete audio recording of the procedure. Ariz. Rev. Stat. § 38-1104(D).
- If disciplinary action is sought after the investigation, the officer is provided with information regarding discipline of other LEOs of similar rank/experience in the past two years for the same/similar violations, or copies of their files, and the employer cannot take final action and no hearing can be scheduled until the officer receives this information. Ariz. Rev. Stat. § 38-1104(E).
- If the officer appeals a disciplinary action and requests a copy of the LEO’s investigative file, the employer must provide a complete copy of the investigative file as well as the names and contacts information of everyone interviewed during the investigation. Ariz. Rev. Stat. § 38-1106(A)(1).

Limits Discipline:

- Standard for imposing officer discipline is "just cause": A law enforcement officer is not subject to disciplinary action except for "just cause," which means the officer's employer must have told him/her that the conduct was subject to discipline through manuals, handbooks, etc.,

or the officer should have reasonably known disciplinary action could result from the conduct; discipline must not be excessive and must be reasonably related to the seriousness of the offense and the officer's service record. Ariz. Rev. Stat. § 38-1101(7), 1103.

- If a law enforcement agency or police chief fires an officer in reverse of civil service board's determination that there was no "just cause" for termination, or if there is no administrative hearing, the officer can receive a hearing in the superior court, and the court has 35 days to begin the action. Ariz. Rev. Stat. § 38-1107(A), (B), (D).
- "The results of a polygraph examination in an investigation may not be the basis for disciplinary action unless other corroborating evidence or information exists to support that disciplinary action." Ariz. Rev. Stat. § 38-1108(A).
- If an LEO appeals a disciplinary action to a single hearing officer or ALJ, the LEO (or agency) may request a change of hearing officer or ALJ, and the first such request will be granted as a matter of course. Smaller communities can provide an alternate hearing officer through interagency agreement with another city, town, or county, in which case the LEO must pay half of the cost of the alternate hearing officer if the LEO requested the change. The new hearing officer must give both parties the option to continue the hearing for an additional 10 days. All subsequent requests for a change in the hearing officer or ALJ require a showing that a fair and impartial hearing cannot be obtained due to the assigned hearing officer's or ALJ's prejudice, which is decided by the supervisor of the hearing officer or ALJ. Ariz. Rev. Stat. § 38-1106(F).
- Collective bargaining agreements can limit discipline, and Arizona's Peace Officer's Bill of Rights does not preempt protections provided in employment agreements or collective bargaining agreements. Ariz. Rev. Stat. § 38-1102.
- The statute provides a privilege for communications between an officer and a "critical incident stress management team member" who receives information in confidence from the officer while responding to a critical incident such that the critical access team member cannot be compelled to testify regarding the content of that communication, unless waived or the communication is made during the course of a criminal investigation. Ariz. Rev. Stat. § 38-1111(A)-(B).

<u>Limits Oversight</u>

- Information about an open investigation cannot be placed in the publicly available section of an officer's personnel file, until the appeal process concludes. Ariz. Rev. Stat. § 38-1109.

<u>Body Cam Videos</u>:

- When the agency is investigating a use of force incident resulting in death or serious physical injury to another, if the LEO recorded a video, the officer must have the opportunity to view the video and provide any information the officer believes is relevant but only after the officer reads this notice: "Video evidence has limitations and may depict events differently than you recall. The video evidence may assist your memory and may assist in explaining your state of mind at the time of the incident. Viewing video evidence may or may not provide additional clarity to what you remember. You should not feel in any way compelled or obligated to explain any difference in what you remember and acted on from what viewing the additional evidence provides you." Ariz. Rev. Stat. § 38-1116(A)(1)-(2).

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Please let us know if you need further information regarding Arizona's Peace Officers Bill of Rights.

TO: NATIONAL URBAN LEAGUE akerman

Law Enforcement Officer Bill of Rights Summary: Arkansas

Arkansas' Bill of Rights for Law Enforcement Officers, Ark. Code Ann. § 14-52-301, *et seq*., originally passed the Arkansas legislature in 1991 as H.B. 1326, and it has not ever been revised. It passed with only one vote in opposition after the bill's sponsor, Rep. Tim Hutchinson of Bentonville, amended the bill to make the Bill of Rights optional. Indeed, the Arkansas LEO Bill of Rights statute's stated purpose is to "***recommend*** a basic Bill of Rights for law enforcement officers of cities and towns incorporated in Arkansas," and "[a]ny municipality shall have the authority to adopt" the Bill of Rights. Ark. Code Ann. § 14-52-301(a)-(b) (emphasis added).

Arkansas' Bill of Rights for Law Enforcement Officers has apparently only received media attention at the time of its passage. Rep. Jimmie Wilson of Lakeview cast the sole vote against S.B. 1326, explaining that granting LEOs a Bill of Rights that goes beyond the Constitution "without expanding the rights of those who would be their accusers creates an unbalance of power." Rep. Hutchinson defended the bill because its provisions were already included in the North Little Rock Police Department's personnel policies.[1]

The Arkansas statute includes the following problematic provisions:

Restrictions on Interrogation Procedures:

- "Any interrogation of a law enforcement officer shall take place at the office of those conducting the investigation, the place where the law enforcement officer reports for duty, or the [sic] other reasonable place as the investigator may determine." Ark. Code Ann. § 14-52-303(2).
- "During the interrogation of the law enforcement officer, questions will be posed by or through only one (1) interrogator at a time." Ark. Code Ann. § 14-52-303(4).
- "Any interrogation of a law enforcement officer in connection with an investigation shall be for a reasonable period of time and shall allow for reasonable periods for the rest and personal necessities of the law enforcement officer." Ark. Code Ann. § 14-52-303(5).
- "No threat, harassment, promise, or reward shall be made to any law enforcement officer in connection with an investigation in order to induce the answering of any questions that the law enforcement officer has a legal right to refrain from answering, but immunity from prosecution may be offered to induce such a response." Ark. Code Ann. § 14-52-303(6).
- "All interrogations of a law enforcement officer in connection with an investigation against him or her shall be recorded in full. The law enforcement officer shall be allowed to make his or her own independent recording of his or her interrogation and have one (1) witness of his or her choosing present. The witness must be an attorney or a member of the police department that is in no way related to the matter under investigation." Ark. Code Ann. § 14-52-303(7).

[1] *After amending the proposal outlining a bill of rights for law enforcement officers to make the bill of rights optional instead of mandatory, a House committee Wednesday recommended the proposal for passage*, Arkansas Democrat-Gazette (Feb. 14, 1991).

Officers Have Unfair Access to Information:

- "The law enforcement officer being investigated shall be informed at the commencement of his or her interrogation of: (A) The nature of the investigation; (B) The identity and authority of the person or persons conducting the investigation; and (C) The identity of all persons present during the interrogation." Ark. Code Ann. § 14-52-303(3).
- "Any law enforcement officer under official departmental charges shall be entitled to a predisciplinary hearing before the chief of police if the disciplinary action is being considered. At the hearing, the law enforcement officer shall have the opportunity to have a person of his choosing present." Ark. Code Ann. § 14-52-303(10).
- "Whenever a personnel action may result in any loss of pay or benefits or status, the law enforcement officer shall be notified of the pending action by written official departmental charges a reasonable time before the action is taken except where exigent circumstances otherwise require." Ark. Code Ann. § 14-52-305.

Limits Discipline:

- "No adverse inference shall be drawn and no punitive action taken from a refusal of the law enforcement officer being investigated to participate in the investigation or be interrogated other than when the law enforcement officer is on duty or is otherwise fully compensated for the time spent in accordance with city and departmental overtime policy and state and federal law." Ark. Code Ann. § 14-52-303(1).
- "No formal proceeding which has the authority to administer disciplinary action against a law enforcement officer may be held except upon official departmental charges." Ark. Code Ann. § 14-52-303(8).
- "Official departmental charges shall contain the specific conduct that is alleged to be improper, the date and the time of the alleged misconduct, the witnesses whose information provided the basis for the charges, and the specific rules, regulations, orders, or laws alleged to have been violated." Ark. Code Ann. § 14-52-303(9).
- "No formal proceeding which has authority to penalize a law enforcement officer may be brought except upon charges signed by the person making those charges." Ark. Code Ann. § 14-52-303(11).

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Please let us know if you need further information regarding Arkansas' Bill of Rights for Law Enforcement Officers.

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Law Enforcement Officer Bill of Rights Summary: California

The California legislature passed that state's Public Safety Officers Procedural Bill of Rights Act, Cal. Gov't Code § 3300, *et seq.*, in 1976 (the "Act"), and the statute has undergone several revisions:

- In 1978, Subsection (h) of Section 3303 of the Act was amended to include a provision regarding the representatives that officers, at their request, are entitled to have present during interrogation. The amendment added that "[t]he representative shall not be required to disclose nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters." These amendments were approved by the Governor on September 15, 1978.
    - Also in 1978, Section 3301 of the Act was amended to include in the definition of "public safety officer," state correctional officers employed by the State Department of Corrections, as well as "all persons employed by the State of California and designated by law as peace officers." Further, Section 3302 of the statute was amended to address officers' rights to engage in political activity (or not).
- In 1979, the state legislature enacted Section 3309.5, regarding the denial or refusal of any rights and protections under the Act. The new section provided as follows and was approved by the Governor on July 27, 1979:

> 3309.5. (a) It shall be unlawful for any local public safety department to deny or refuse to any local public safety officer the rights and protections guaranteed to them by this chapter.
> (b) The superior court shall have initial jurisdiction over any proceeding brought by any local public safety officer against any local public safety department for alleged violations of this section.
> (c) In any case where the superior court finds that a local public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the local public safety department from taking any punitive action against the local public safety officer.

- In 1982, the term "public safety officer" was expanded and a section stating no funds were available for reimbursement to state agencies implementing the statute.
- In 1983, Section 3309.5, reproduced in full above, was amended to delete all references to the word "local" from subsections (a) through (c).

- In 1989, Section 3301 was amended, classifying various officers and employees of state and local agencies as "peace officers," and the classification was "recast" by "designating peace officers in the several sections of the Penal Code according, in part, to the officers' and employees' occupation." The statute also added "to the listing of peace officers security officers of the California State Police Division and security officers of the Hastings College of the Law." There were "numerous conforming and technical changes" as well.
- In 1990, the definition of "public safety officer" in Section 3301 was amended again to "add to the list of specified peace officers… the officers of a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services."
- In 1994, the state legislature amended Section 3303 prohibiting "any statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action from being admissible in any subsequent civil proceeding, subject to specified qualifications." Notwithstanding, certain exceptions were introduced to this rule, including that the subdivision did not limit the use of statements "when the employing public safety department is seeking civil sanctions against any public safety officer," in "administrative actions," for impeachment purposes (after an in camera review of the statements), or if the officer "subsequently is deceased." Section 3303 was also amended to add a subsection requiring that the entire interrogation may be recorded and to provide the officer access to the tape or transcription under certain circumstances (subsection g). Subsection (g) further allowed for the officer to bring his or her own recording device and record any and all aspects of the interrogation. Subsection (g) was also amended to provide an officer access to reports or notes not deemed to be confidential. Of concern, any "confidential" notes or reports could not be entered into the officer's personnel file. Further, subsection (h) of Section 3303 was amended to provide that if it was deemed that the officer may be charged with a criminal offense, the officer would be immediately informed of their constitutional rights. Subsection (i) was amended to add that if there was likely punitive action based on the filing of a formal written statement of charges, or otherwise, the officer is entitled to a representative. Lastly, subsection (j) was amended to assert that no officer shall be loaned or temporarily reassigned "if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances."
- Before the 1997-1998 Regular Session of the California Assembly, the Act required "completion and prosecution of state peace officers within three years" and contained no law or time limit for local peace officers. On February 28, 1997, a bill was introduced requiring that investigations be completed within one year, except for certain multi-jurisdictional and other investigations for which management has no reasonable control (i.e. an employee is incapacitated or otherwise unavailable, or the officer is named as a defendant in civil or criminal litigation, or involves an allegation of workers' compensation fraud). Additionally, a provision was adding asserting that an officer could waive the time limitation in writing. And, the amendments required notification to the officer in writing within 30 days of a decision by a public agency to impose discipline unless the officer is unavailable for discipline. Lastly, the amendments delineated the circumstances in which an agency could reopen an investigation. The legislative history specifically notes that "[a]ll representative *law enforcement groups* [] carefully negotiated th[e] bill on grounds that 'it is unfair to [] peace officer[s] not to investigate and bring charges or dismiss the action within a reasonable time.'" However, there was also opposition from other departments, boards, and organizations. First, the Department of Finance

wrote in opposition underscoring "the potential for excessive disability settlements and for the abandonment by employers of otherwise deserving adverse actions simply because the employer could not complete its investigations in a timely manner (i.e., less than one year)." Additionally, the California State Personnel Board wrote that Board opposed the bill because it essentially abandoned the present three-year statute in favor of a one-year rule, would "make it more difficult for state agencies...to discipline [] officers,...[c]ould result in the abandonment of otherwise deserving adverse actions simply because the agency could not complete its investigation in a timely manner, ...[and] [w]ould create a different legal standard for adverse actions taken against peace officers versus those taken against non-peace officers without justification for the difference." Lastly, the ACLU urged for the bill to be amended because of the concern that the tolling provision of the bill would cause for persons to be advised by counsel to wait to file a complaint until after any criminal case is resolved. The ACLU therefore suggested "amendments to clarify that the one year time limit does not begin to commence until after the defendant's criminal prosecution has terminated." In addition, the Governor in his veto message wrote, "While I would consider reform in this area, it must remain balanced and carefully crafted." Notwithstanding, on the third reading of the bill, which occurred on Monday, May 19, 1997, an act to amend Sections 3304 and 3309.5 of the Government Code at the 72nd Session of the California 1997-1998 Regular Session, the bill passed with 77 "ayes" and 1 "no." Then the bill was transmitted to the Senate and the changes were approved by the Governor on July 27, 1997.

- On March 31, 1998, a bill was introduced precluding an employing agency from requiring a public safety officer to submit to a lie detector as a condition of voluntarily seeking assignment to a sensitive position and expanding the definition of "lie detector" to bring the overall statute up to date with current technology. In introducing this bill, the drafters noted that the Act currently provided that no officer could be compelled to submit to a polygraph examination against his will, nor could evidence of the same be used as evidence in a proceeding. However, they took issue with the fact that this protection appeared to only apply where "officers are under investigation for criminal activity," and not where the polygraph examination was used to screen applicants voluntarily seeking transfer to sensitive police assignments." Thus, proponents of the bill wanted to expand the protection to the context of voluntarily seeking transfer to sensitive police assignments. In arguing in favor, the proponents cited case law discussing the inadmissibility and lack of reliability of polygraph examinations. Notwithstanding, the Los Angeles County Sheriff opposed the bill given the "potential risk to public safety," and the need for "latitude to use those devices" to screen employees for "sensitive assignments." In turn, the Los Angeles Police Protective League (Sponsor), the Association for Los Angeles Deputy Sheriffs, Inc., the Los Angeles Probation Department Union, AFSCME, Local 685, and the California Association of Highway Patrolmen California Correctional Peace Officers Association supported the bill. By the May 5, 1998 hearing, however, the California State Association of Counties had joined in opposition of the bill. Of note, the provision modernizing the statute to define "lie detector" to include technology that did not exist 20 years ago passed without opposition. Ultimately, the remainder of the bill also passed, being approved by the Governor on July 3, 1998. As a result, Section 3307 of the Act was amended to read that no public safety officer could be compelled to submit to a lie detector test against his or her will, nor could the refusal to take the test result in any disciplinary action or other recrimination. The new section became 3304.5 and Section 2 of 3304.5.

- In June of 1998, Section 3304 of the Act was amended to provide that an administrative appeal instituted by a public safety officer under the Public Safety Officer's Procedural Bill of Rights Act must be conducted in conformance with rules and procedures adopted by the local public agency. According to the comments of the bill proposing the amendments, the Act as it stood "left the type of administrative appeal to local agencies, and lack[ed] any direction from the courts." As such, proponents considered that "peace officers in California face[d] a 'crap shoot' type of administrative appeal system with no definition as to the burden of proof, burden of going forward, or the application of the rules of evidence for appeals." In addition to conducting the administrative appeals in the same manner as administrative adjudication involving state agencies, a provision was proposed that if a public safety department is ultimately found to have violated any provisions of the Act, the agency would pay the reasonable attorney fees to the affected public safety office. The amendments were supported by the Association for Los Angeles Deputy Sheriffs, Inc., California Organization of Police and Sheriffs, Los Angeles Probation Department Union, and AFSCME, Local 685 and opposed by the California State Sheriffs' Association, LA County Sheriff, California State Association of Counties, and the ACLU. In opposition to the bill, the California State Association of Counties argued that the amendments "would undermine management control and add local costs." Further, the California State Sheriffs' Association suggested that the amendments would "encourage litigation on any actual or perceived violation of an officer's rights," rather than the existing likelihood that the dispute would be settled through arbitration, especially since the award of fees was not only for "deliberate or malicious" violations. On Wednesday, July 22, 1998, the amendments were put to a vote and passed. On August 5, 1998, the amendments were approved by the Governor.
- Also in June of 1998, a bill was proposed setting forth guidelines to be followed when a public agency, or appointing authority, removes, or attempts to remove, a chief of police from office. According to the bill's sponsor, the bill was meant to provide that the Chief of Police may not be disciplined without just cause. Opposition to the bill argued that public safety officers "already benefit from substantial due process rights." The Los Angeles County Sheriff Sherman Block also argued that the "the requirement of 'reason or reasons' for every such 'punitive action' could result in any such action being considered a constitutionally protected property interest," meaning that governmental agencies would have to offer full due process protection for every "punitive action." Additionally, they worried that the Act would increase the rigor of required hearings and costs to public entities and delay the discipline and transfer of peace officers. The City of Long Beach worried that the changes could significantly increase litigation in connection with attempts to replace a police chief which would add to city costs and would delay the proceedings. They also worried that the new requirements suggested that a chief must be fired for "cause" even if the chief served on at an "at will" basis. The amendments modified the Act "to provide that a chief of police cannot be fired without written notice of the reasons and an opportunity for an administrative appeal," while attempting to maintain that there did not have to be specific reasons for the termination, and that there was no constitutionally protected property interest created. The bill also clarified "that protections provided officers regarding punitive actions [we]re limited to officers who have passed their probationary employment periods." According to proponents, the changes would protect police chiefs from arbitrary political pressure. Later amendments on March 26, 1998 added an "additional requirement that no punitive action, nor denial of promotion on grounds other than

merit, shall be undertaken against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with notice of good cause." Again, this was meant to protect police chiefs from being fired or having punitive action taken against them arbitrarily. Several anecdotes were included in the legislative history detailing when such instances had occurred. Later, amendments were added to clarify that these protections only applied to those who had successfully completed the probationary period of their employment. After an assembly meeting on the amendments on July 7, 1998, the assembly deleted the requirement of written notice but maintained the opportunity for administrative appeal, provided, in the case of a police chief, incompatibility of management style as a reason for removal, and added "clarifying language." At the third reading on August 20, 1998, the bill passed with 50 "ayes" and 15 "noes." On September 22, 1998, the amendments were approved by the Governor and chaptered by the Secretary of State the next day. Of note, these amendments were to Section 3304 of the Act. Thus, while Section 3304 previously only had two subsections, subsections (c)-(h) were added to reflect the new laws.

- On September 7, 1999, the Governor approved this newly created section of the statute, § 3307.5, prohibiting a police department from posting an officer's photo on the Internet if that officer "reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family."
- In, 2000, a hearing was held in which additions were proposed to the Act requiring an employer of a "public safety officer to permit an officer to inspect his or her personnel file or a copy at the place the officer reports to work, during usual business hours, with no loss of compensation, and authorizes the sealing of any written warnings or reprimands issued more than two years ago." This part of Section 3306.5 of the Act was approved by the Governor on July 24, 2000.
- In June of 2002, additional rights under the Act were proposed "for specified willful and malicious conduct by an employer." Specifically, this provided that "in addition to existing extraordinary relief, upon a finding by a superior court that a public safety department, its employees, agents, or assigns - with respect to acts taken within the scope of employment - willfully and maliciously violated any provision of the act with the intent to injure a public safety officer, the public safety department - for each and every offense - shall be liable for a civil penalty of up to $25,000, and for reasonable attorney's fees, as specified," "provided that [if] there is sufficient evidence to establish actual damages suffered by the officer, the public safety department shall also be liable for the amount of the actual damages and an amount to be determined by a jury, or a court sitting without a jury, for exemplary damages." These changes included a provision in which the department may not have to indemnify for any actions by a contractor. However, the changes also allowed for sanctions if the court found "a bad faith or frivolous action or a filing for an improper purpose." The sanctions could include, but were "not limited to, reasonable expenses, including attorney's fees." Proponents of these changes argued that these same remedies were available to the public in civil rights laws, while those opposed argued that the changes were unnecessary and would also lead to burdensome litigation. Opponents warned that there could be a "chilling effect on the willingness of law enforcement managers to take decisive action against an officer who deserves to be disciplined, demoted, transferred or otherwise reprimanded." In response, proponents argued that there was "little incentive to prevent supervisors and managers from maliciously violating the Public Safety Officers Procedural Bill of Rights Act because there was no current penalty for doing

so." The legislative history noted that similar changes to the Act were attempted in 1958, but unsuccessful and that the current changes were narrower in scope. During arguments about the changes, some argued that the changes may be duplicative and not sensible or appropriate with regard to the punitive damages provision. In order to attempt to compromise, proponents added that the court would be the one to determine some of the issues within the revision and make findings. On August 15, 2002, the amendments in Section 3309.5 were passed with a vote of 76 "ayes" and 2 "noes." On September 30, 2002, the Governor approved the bill. § 3309.5(e).

- On July 12, 2020, Section 3312 was added to the Act providing that police departments cannot take action against officers for wearing flag pins.
- In 2003, Section 3309.5 of the Act was amended to clarify in subsection (b) that no investigation by the United States should be construed to "affect the rights and protections afforded to state public safety officers" under the Act or Section 832.5 of the Penal Code.
- In 2005, minor changes were made to section 3309.5 in which the word "injunction" was added after the word "preliminary" in subsection (d)(1), and subsection (d)(2) was clarified to state that the court could order sanctions against a party's *attorney* as well as the party. There were also minor deletions in subsection (d)(2) of 3309.5. These changes were approved on June 28, 2005.
- Also, in 2009, additions were proposed to the Act prohibiting "any public agency from taking any punitive action against a public safety officer or denying a promotion on grounds other than merit of an officer because he or she is placed on a 'Brady list,' as specified." A "Brady list" was defined "as any system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office in accordance with the holding in to *Brady v. Maryland*, 373 U.S. 83 (1963)." Proponents of the additions to the Act cited the "disturbing trend under which law enforcement agencies take punitive actions against their officers based solely on the officers' inclusion on 'Brady' Lists, without regard to the facts in an investigation." Numerous officers had reportedly been subject to punitive action or denied promotions on this basis even though there was reportedly no "uniform criteria for placement on the Brady List." Opposition to the changes worried that the provision would "prohibit a public agency from taking punitive action against a public safety officer, or denying promotion on grounds other than merit, because that officer has been placed on a Brady list." Ultimately, the opposition feared that such provisions could "result in untrustworthy and unreliable officers patrolling the community, undermining the public trust and credibility of the rest of the department." The California Public Defenders Association agreed with the opposition, stating that the bill did "nothing to protect hard working and honest officers, but instead enable[d] those few damaged officers to continue their employment even though their arrests might not be filed and prosecuted because their word simply cannot be trusted." The Public Defenders Association also noted that the number of officers with a "Brady Jacket" was "small" and "microscopic" in relation to law enforcement officers in the state. It was also noted that an almost identical bill failed passage in the 2011-2012 Legislative Session. However, the changes were eventually approved of by the Governor on October 12, 2013, after 8 different votes. As such, an entire section was added to Act, and numbered Section 3305.5, which reads:

> 3305.5. (a) A punitive action, or denial of promotion on grounds other than merit, shall not be undertaken by any public agency against any public safety officer solely because that officer's name has been placed on a Brady list, or that the

officer's name may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83.

(b) This section shall not prohibit a public agency from taking punitive action, denying promotion on grounds other than merit, or taking other personnel action against a public safety officer based on the underlying acts or omissions for which that officer's name was placed on a Brady list, or may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83, if the actions taken by the public agency otherwise conform to this chapter and to the rules and procedures adopted by the local agency.

(c) Evidence that a public safety officer's name has been placed on a Brady list, or may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83, shall not be introduced for any purpose in any administrative appeal of a punitive action, except as provided in subdivision (d).

(d) Evidence that a public safety officer's name was placed on a Brady list may only be introduced if, during the administrative appeal of a punitive action against an officer, the underlying act or omission for which that officer's name was placed on a Brady list is proven and the officer is found to be subject to some form of punitive action. If the hearing officer or other administrative appeal tribunal finds or determines that a public safety officer has committed the underlying acts or omissions that will result in a punitive action, denial of a promotion on grounds other than merit, or any other adverse personnel action, and evidence exists that a public safety officer's name has been placed on a Brady list, or may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83, then the evidence shall be introduced for the sole purpose of determining the type or level of punitive action to be imposed.

(e) For purposes of this section, "Brady list" means any system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office in accordance with the holding in Brady v. Maryland (1963) 373 U.S. 83.

Media Coverage

California's Public Safety Officers Procedural Bill of Rights Act has received media attention, especially with regard to the "Brady List" changes. For example, in 2013, the Orange County Register (California) reported on the proposed bill preventing punitive action based on an

officer's inclusion on a Brady List.[1] The article voiced concern about disallowing punitive action for actions such as withholding "exculpatory" evidence and "lying on the witness stand."[2] The article emphasized that while an "issue of police misconduct can take years to drag through the court system… defendants, even murderers, might get off…[o]r the city or county might be liable to compensate someone falsely accused."[3] The article quoted Assemblyman Tom Ammiano, D-San Francisco, who stated that the legislature "should not be tying the hands of local governments when it comes to punishing or getting rid of police with disciplinary records.[4]

Another article voiced the same concerns with regard to the legislation concerning "Brady Lists," explaining that "[p]rosecutors place officers on the Brady list for various reasons – including use of excessive force and falsifying reports – depending on the policies adopted at each county's district attorney's office."[5] Notwithstanding, the article recognized that proponents of the legislation stated that the "Brady List" is "a growing list of conduct [] entirely at the discretion of prosecutors," and sometimes includes "off-duty issues, including driving under the influence convictions or misdemeanor arrests that don't lead to charges."[6] Ron Cottingham, president of the Peace Officers Research Association of California, however, said "the goal [of the legislation was] to keep agencies from punishing officers who land on a Brady list before an investigation proves whether the original allegation was legitimate."[7]

Additionally, the San Diego Union-Tribune published an article about how in California, because of "the state Supreme Court's 2006 Copley decision involving the former owner of this news organization, the disciplinary records of law enforcement officers are secret," and "[s]o are internal investigations of specific shootings."[8] As a result, "[t]he public has no right to know which officers may have a history of using force."[9] The article specifically asserted that the "Peace Officers' Bill of Rights makes it tough to remove an officer."[10] By example, the article cited to former UC Davis cop John Pike, who pepper-sprayed peaceful Occupy protesters in November 2011, and was awarded a "$38,000 workers compensation settlement because of the stress he endured — more than the amount received by any of his victims."[11] Pike reportedly "spent eight months on paid leave and then was fired." The article criticized § 3305.5's prohibition on "disciplining officers that district attorneys have listed as having lied or otherwise misbehaved."[12] The author of the article felt that this would "further protect officers who unnecessarily use force and then mislead investigators." By past example, the article referenced the shooting of "innocent

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[1] *Balance in shielding police,* Orange County Register (California), Sept. 2, 2013.
[2] *Id.*
[3] *Id.*
[4] *Id.* at p. 2.
[5] Melody Gutierrez and Kim Minugh, *California police unions fight discipline of officers under prosecutors' lists,* Sacramento Bee (California), Sept. 12, 2013.
[6] *Id.*
[7] *Id.* at p. 2.
[8] Steven Greenhut, *Police Shootings Raise Use-of-Force Issues,* San Diego Union-Tribune, Oct. 29, 2013.
[9] *Id.*
[10] *Id.*
[11] *Id.* at p. 2.
[12] *Id.*

bystanders who did not come close to the right profile" and the shooting of a 13-year-old who was walking down the street with a plastic pellet rifle.[13]

The California statute includes the following problematic provisions:

Restrictions on Interrogation and Investigation Procedures:

- "The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed." Cal. Gov't Code § 3303(a).
- ". . . . All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time." Cal. Gov't Code § 3303(b).
- "The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities." Cal. Gov't Code § 3303(d).
- "The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent." Cal. Gov't Code § 3303(e).
- ". . . . The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation." Cal. Gov't Code § 3303(g).
- "If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights." Cal. Gov't Code § 3303(h).
- "Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters." Cal. Gov't Code § 3303(i).
- "No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section

[13] *Id.* at p. 1.

shall apply only to lockers or other space for storage that are owned or leased by the employing agency." Cal. Gov't Code § 3309.

Time Limits on Disciplining Officers:

- "Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct." Cal. Gov't Code § 3304(d)(1).
    - The exception in subdivision (g): "Notwithstanding the one-year time period as specified in subdivision (d), an investigation may be reopened against a public safety officer if both of the following circumstances exist: (1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation. (2) One of the following conditions exist: (A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency. (B) The evidence resulted from the public safety officer's predisciplinary response or procedure." Cal. Gov't Code § 3304(g).
- "[T]he time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period. [T]he public safety officer [may] waive[] the one-year time period in writing, [and] the time period shall be tolled for the period of time specified in the written waiver. If the investigation is a multijurisdictional investigation [there may be] a reasonable extension for coordination of the involved agencies. If the investigation involves more than one employee [there may be] a reasonable extension. If the investigation involves an employee who is incapacitated or otherwise unavailable [the one-year limit does not apply]. If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending. If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution. If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer [the one-year limit does not apply]." Cal. Gov't Code § 3304(d)(2).
- "If, after investigation and any predisciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline." Cal. Gov't Code § 3304(f).

Officers Have Unfair Access to Information:

- "The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation." Cal. Gov't Code § 3303(b).
- "The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation." Cal. Gov't Code § 3303(c).

- The LEO receives a recording of the interrogation prior to being interrogated again and receives copies of all stenographer notes, investigative reports, and complaints unless deemed confidential: "The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or **prior to any further interrogation at a subsequent time**. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. Cal. Gov't Code § 3303(g) (emphasis added).

Limits Discipline:

- An LEO may not be reassigned as discipline or pending an investigation: "No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances." Cal. Gov't Code § 3303(j).
- Section 3309.5 gives LEOs a private right of action if the police department "maliciously violated any provision of this chapter with the intent to injure the public safety officer." Such private causes of action may discourage discipline.

Limits Oversight:

- LEO's placement on Brady List can only be used if underlying acts proven and to determine level of punishment: "Evidence that a public safety officer's name was placed on a Brady list may **only** be introduced if, during the administrative appeal of a punitive action against an officer, **the underlying act or omission for which that officer's name was placed on a Brady list is proven** and the officer is found to be subject to some form of punitive action. If the hearing officer or other administrative appeal tribunal finds or determines that a public safety officer has committed the underlying acts or omissions that will result in a punitive action, denial of a promotion on grounds other than merit, or any other adverse personnel action, and evidence exists that a public safety officer's name has been placed on a Brady list, [], then **the evidence shall be introduced for the sole purpose of determining the type or level of punitive action to be imposed**. Cal. Gov't Code § 3305.5(d) (emphasis added); *see also* Cal. Gov't Code § 3305.5(c). For purposes of this section, "Brady list" means any system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office in accordance with the holding in *Brady v. Maryland* (1963) 373 U.S. 83." Cal. Gov't Code § 3305.5(e).
- The LEO's statements during interrogation given under threat of punishment cannot be used in a subsequent civil action, unless by the LEO (or for impeachment): "No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding… subject to the following qualifications: (1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer [,] (2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including

administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action[,](3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer[, and] (4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased." Cal. Gov't Code § 3303(f).

- ". . . . The [LEO's chosen] representative [attending interrogations] shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters." Cal. Gov't Code § 3303(i).

Erases Misconduct Records:

- ". . . . No notes or reports [from an investigation or interrogation] that are deemed to be confidential may be entered in the officer's personnel file." Cal. Gov't Code § 3303(g).
- "No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer." Cal. Gov't Code § 3305.
- "A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment." Cal. Gov't Code § 3306.
- "If, after examination of the officer's personnel file, the officer believes that any portion of the material is mistakenly or unlawfully placed in the file, the officer may request, in writing, that the mistaken or unlawful portion be corrected or deleted. Any request made pursuant to this subdivision shall include a statement by the officer describing the corrections or deletions from the personnel file requested and the reasons supporting those corrections or deletions. A statement submitted pursuant to this subdivision shall become part of the personnel file of the officer. Cal. Gov't Code § 3306.5(c). Within 30 calendar days of receipt of a request [], the employer shall either grant the officer's request or notify the officer of the decision to refuse to grant the request. If the employer refuses to grant the request, in whole or in part, the employer shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the officer." Cal. Gov't Code § 3306.5(d).

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Please let us know if you need further information regarding California's Public Safety Officers Procedural Bill of Rights Act.

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TO: NATIONAL URBAN LEAGUE akerman

Law Enforcement Officer Bill of Rights Summary: Delaware

Delaware's Law Enforcement Officers' Bill of Rights, 11 Del. Code Ann. § 9200, *et seq*., originally passed the state legislature in 1985, and the statute has undergone 12 substantive revisions, most recently in 2018:

- In 1985, HB 202 replaced § 9200(b) with a revised paragraph further detailing the class of law enforcement officers that the statute protects. Additionally, §9200(c) was amended to provide that a formal complaint seeking disciplinary action against an officer shall only be prosecuted under departmental regulation if the complaint is supported by substantial evidence from an investigation by an authorized member of the department.[1] Section 9203 was amended to detail the procedure for interdepartmental hearings that are required when officers are suspended or charged with an offense that could lead to disciplinary actions that would be on record. Finally, a severability clause was added as section § 9210. These amendments were approved on July 4, 1985.[2]
- In 1990, HB 612 amended § 9200(b) to include "the police force established by the Delaware River and Bay Authority" in the class of law enforcement officers protected under the statute. This amendment was approved on June 20, 1990.[3]
- In 1995, HB 252 amended § 9200(c) by adding a new paragraph designated as (c)(12) that provides that all internal investigatory files and any contractual disciplinary grievance procedures are and shall remain confidential and unavailable to the public. This amendment was approved on July 7, 1995.[4]
- In 1996, HB 574 amended § 9200 to add a new section (d) providing that to gain access to an officer's personnel file or internal affairs investigatory file, a citizen must bring an action against the officer "alleging that the officer breached official duties that resulted in injury or other damage to the citizen…." This amendment was approved on July 9, 1996.[5]
- In 1997, HB 172 amended § 9205(b) to provide that "any officer appointed under this subsection, whether in the department or under the auspices of the Criminal Justice Council is not liable for civil damages from any acts or omissions arising out of their service on the board as long as the member of the board of officers acted in good faith and without malice in carrying out their responsibilities or duties." This amendment was made with the intention of "assur[ing] officers who are appointed to serve on hearing boards that they will not be the subject of civil litigation as the result of serving on hearing boards." It was approved on July 9, 1997.[6]
- In 1998, HB 476 amended § 9200(b) to include "sworn uniformed police or enforcement officer[s] of the Department of Natural Resources and Environmental Control or of the

[1] 11 Del. Laws ch. 139 § 9200 (1985) (amending 11 Del. C. § 9200).
[2] 11 Del. Laws ch. 139 § 9203 (1985) (amending 11 Del. C. § 9203).
[3] 11 Del. Laws ch. 237 § 9200 (1990) (amending 11 Del. C. § 9200(b)).
[4] 11 Del. Laws ch. 175 § 9200 (1995) (amending 11 Del. C. § 9200(c)).
[5] 11 Del. Laws ch. 467 § 9200 (1996) (amending 11 Del. C. § 9200).
[6] 11 Del. Laws ch. 166 § 9205 (1997) (amending 11 Del. C. § 9205(b)).

Delaware State Capital Police, or [a] Probation and Parole Officer[s] of the Department of Corrections" in the class of law enforcement officers the statute protects. This amendment was approved on July 17, 1998.[7]

- In 2000, HB 512 amended § 9200(b) to replace "University of Delaware Police Division" with "the Delaware State University Police Department," thus adding the Delaware State University Police Department to the class of law enforcement officers protected under the statute. This amendment was approved June 30, 2000.[8]
- In 2007, HB 84 amended § 9200(b) to include "state detectives or special investigators of the Department of Justice" in the class of law enforcement officers protected under the statute. This amendment was approved on June 18, 2007.[9]
- In 2008, HB 261 amended § 9200(b) to include "State Fire Marshall and agent[s] of the State Division of Alcohol and Tobacco Enforcement" in the class of law enforcement officers protected under the statute. This amendment was passed July 3, 2008.[10]
- In 2009, HB 175 amended § 9200(b) to include "agent[s] of the State Office of Narcotics and Dangerous Drugs" in the class of law enforcement officers protected under the statute. This amendment was passed July 13, 2009.[11]
- In 2014, HB 397 provided that "officers who are certified by the Council on Police Training and have experience and/or training on conducting an internal law enforcement investigation and are appointed by the Chief of Police of the law enforcement department are among those qualified to conduct an investigation of an officer in question and provide substantial evidence supporting a complaint before a formal complaint against the officer can be prosecuted seeking disciplinary action." This amendment passed both houses without opposition on July 21, 2014.
- In 2018, HB 474 amended § 9200(b) to include "Probation and Parole officer[s] of the Department of Services for Children, Youth and their Families" in the class of law enforcement officers the statute protects. This amendment was passed on July 23, 2018.[12]

Media Coverage

Delaware's Law Enforcement Officers' Bill of Rights has received media attention regarding the statute's inherent restrictions to places on the operation of the civilian police review task force recently put in place by the Wilmington City Council.[13] Without revision, the statute would essentially block the task force from doing any substantive review or investigation of police, rendering it ineffectual. After making general recommendations to the legislature, the members of the task force addressed a letter to officials stating a lack of confidence in the task force's ability to hold police accountable because of the LEOBOR and included a draft bill of amendments, requesting the changes be made the following session.[14] Additionally, the General Assembly has drafted a bill to amend the LEOBOR, allowing police discipline records to be used in court and

[7] 11 Del. Laws ch. 456 § 9200 (1998) (amending 11 Del. C. § 9200(b)).
[8] 11 Del. Laws ch. 367 § 9200 (2000) (amending 11 Del. C. § 9200(b)).
[9] 11 Del. Laws ch. 43 § 9200 (2007) (amending 11 Del. C. § 9200(b)).
[10] 11 Del. Laws ch. 347 § 9200 (2008) (amending 11 Del. C. § 9200(b)).
[11] 11 Del. Laws ch. 347 § 9200 (2009) (amending 11 Del. C. § 9200(b)).
[12] 11 Del. Laws ch. 347 § 9200 (2018) (amending 11 Del. C. § 9200(b)).
[13] Jeanne Kuang, *Purzycki: Board gives 'illusion' of oversight; Criticizes civilian police review board measure*, The News Journal (Nov. 28, 2020).
[14] Sarah Gamard, *9 members 'do not have confidence' in police reform work*, The News Journal (Mar. 31, 2021).

for the public to access complaints against officers or details of any disciplinary hearings, and barring police from destroying or discarding discipline records, among other things.[15] The bill would also completely remove the portion of the Bill of Rights that states that police do not have to disclose officers' personnel and internal investigatory files unless civil plaintiffs sue for physical injury or damages, a confidentiality clause that is the only one of its kind within the United States. [16] Of course, there is a debate on the plausibility of these amendments being passed as the police lobby, which has a significant influence on the Delaware legislature, continues to push back against reform.[17]

The Delaware statute includes the following problematic provisions:

Restrictions on Interrogation Procedures:

- Questioning must be conducted at a reasonable hour, preferably when the officer is on duty, unless the investigator determines the gravity of the investigation requires immediate questioning. § 9200(c)(1).
- Questioning shall take place at agency HQ or the office of the local troop or police unit in which the incident allegedly occurred unless otherwise waived in writing by the officer being investigated. § 9200(c)(2).
- Officer under investigation will not be interviewed by more than two investigators. § 9200(c)(3).
- LEO can take reasonable breaks between interview sessions. § 9200(c)(5).
- LEO may have an attorney or other representative present during all interviews. Questioning will be suspended if the LEO requests a representative or attorney "until such time as the officer can obtain the representative requested if reasonably available." § 9200(c)(9).

Time Limits on Disciplining Officers:

- If an officer is entitled to a hearing, that hearing "shall be scheduled within a reasonable period of time from the alleged incident, but in no event more than 30 days following the conclusion of the internal investigation" (unless waived in writing by the charged officer). § 9204.

Officers Have Unfair Access to Information:

- Officers are given information civilians do not have before being interrogated including: the name, rank, and command of the officer in charge of the investigation, § 9200(c)(3); written notice of the nature of the investigation, § 9200(c)(4); "the reasonable possibility of the officer's arrest prior to the commencement of the interrogation." § 9200(c)(8).
- Officers are given information after the investigation including: a copy of a record of all interviews, § 9200(c)(7); access to transcripts, records, written statement, written reports,

[15] *Delaware Police Bill of Rights needs reform,* The News Journal (May 2, 2021).
[16] Matt Bittle, *Delaware Officers' Bill of Rights debated,* Delaware State News (December 13, 2020).
[17] Karl Baker and Esteban Parra, *The battle for police records continues,* The News Journal, (June 21, 2020); Amanda Fries, *Family of man killed by New Castle Co. officers call for police reform; Moses' loved ones show support for legislation,* The News Journal (June 13, 2021).

analyses and videotapes, within 48 hours, § 9200(c)(10); and written notice of investigative findings and any recommendation for further action, § 9200(c)(11).

Limits Discipline:

- A formal complaint against an officer must be "supported by substantial evidence derived from an investigation by an authorized member of the department or another officer who is certified by the Council on Police Training pursuant to Chapter 84 of this title and has experience and/or training on conducting an internal law enforcement investigation and is appointed by the Chief of Police of the law enforcement department to conduct the investigation of the officer in question." § 9200(c)(3).
- "Except upon refusal to answer questions pursued in a valid investigation, no officer shall be threatened with transfer, dismissal or other disciplinary action." § 9200(c)(6).
- Right to hearing: An LEO who is suspended, charged with conduct alleged to violate agency rules or regulations, or charged with breach of discipline, which charge could lead to any form of disciplinary action (other than reprimand), "shall be entitled to a hearing conducted pursuant to the Police Officers Bill of Rights, unless a contractual disciplinary grievance procedure executed between the agency and the LEO's bargaining unit is in effect, in which case the disciplinary grievance procedure therein takes precedence and govern the conduct of the hearing." § 9203.
- Default is for hearing to be conducted by "impartial" fellow officers in same department: "The hearing shall be conducted within the department by an impartial board of officers. . . . In the event an impartial board cannot be convened, then a board of 3 officers or more shall be convened under the auspices of the Delaware Criminal Justice Council." § 9205(b).
- If evidence received in violation of the LEO Bill of Rights, such as an interrogation that exceeds the statutory limits discussed above, that evidence could be excluded from consideration: "**No evidence may be obtained, received or admitted into evidence in any proceeding of any disciplinary action which violates any of the rights established by** the United States Constitution or Delaware Constitution or **by this chapter**. The tribunal may not enter any judgment or sustain any disciplinary action based on any evidence obtained **in violation of the officer's rights as contained in this chapter**." § 9206 (emphasis added).
- No LEO shall be compelled to work extra duty without compensation as a penalty for a disciplinary infraction. § 9208.
- No suspension for any period of time provided in the departmental rules and regulations shall affect the LEO's eligibility for pension, hospitalization, medical and life insurance coverage, or other benefits provided under the LEO's employment contract -- suspension may affect time of pension eligibility only by contractual or other statutory provision. § 9208.

Limits Oversight:

- All records from the investigation shall not be released to the public. § 9200(c)(12).
- Law enforcement agencies cannot be required to disclose any personnel file or investigation file in any civil proceeding, except when a citizen sues the LEO alleging a breach of the LEO's official duties resulting in injury or damage. § 9200(d)(1)-(2).

Erases Misconduct Records:

- All records compiled as a result of any investigation subject to this chapter and/or a contractual disciplinary grievance procedure "shall be and remain confidential and shall not be released to the public." § 9200(c)(12).
- No material may be inserted into an officer's file without giving the LEO the opportunity to review, sign, receive a copy and comment in writing on the adverse material. § 9201.

* * * * *

Please let us know if you need further information regarding Delaware's Law Enforcement Officers' Bill of Rights.

TO: NATIONAL URBAN LEAGUE akerman

Law Enforcement Officer Bill of Rights Summary: Florida

Originally passed in 1974, Florida's Law Enforcement Officers' and Correctional Officers' Rights statute, Fla. Stat. § 112.532, *et seq*., has undergone 9 revisions, most recently in 2020:

- In 1982, S.B. 404 afforded correctional officers with the same rights as law enforcement officers under investigation and through the exercise of their rights.[1]
- In 1993, H.B. 89 revised the statute by expanding the definition of law enforcement officer to include deputy sheriffs as covered individuals under the bill of rights. The revision also allows sheriffs to discipline deputy sheriffs.[2]
- In 1998, H.B. 3161 established rights allowing law enforcement officers and correctional officers to access transcribed interviews and add rebuttal statements to personnel files that contain derogatory information.[3] An officer's access to recordings of interviews is discussed further under "Officers Have Unfair Access to Information" below. The revision allowed law enforcement officers to remain employed in a special status while investigated.[4]
- In 2000, the Florida legislature passed H.B. 937, which provided that an agency may pursue criminal charges against officers under investigation, expanded the rights of officers allowing them to review complainant and witness statements, and provided a fine for the intentional violation of an investigation by an interrogator.[5]
- In 2003, S.B. 1856 gave officers access to information and evidence prior to being questioned that civilians do not have access to and allowed the officer's attorney or representative to review the complaint and all information made by the complainant or witness before the officer is questioned. The revision further provided that such information would be kept confidential until a disciplinary action was finalized.[6] An officer's access to evidence and information is discussed further under "Officers Have Unfair Access to Information" below.
- In 2005, S.B. 656 added a subsection under 112.532 on limiting disciplinary actions which required agencies to complete the investigation within 180 days after the date of the complaint and to notify the officer of its investigation, disciplinary actions, and recommended actions to the officer within 180 days of receiving the complaint. If an investigation is reopened, the disciplinary action must be completed within 90 days of reopening the investigation.[7]

[1] 1982 Fla. Sess. Law Serv. Ch. 82-156 (S.B. 404).
[2] 1993 Fla. Sess. Law Serv. Ch. 93-19 (C.S.H.B. 89) (West).
[3] 1998 Fla. Sess. Law Serv. Ch 98-249 (C.S.H.B. 3161) (West).
[4] *Id*.
[5] 2000 Fla. Sess. Law Serv. Ch. 2000-184 (H.B. 937) (West).
[6] 2003 Fla. Sess. Law Serv. Ch. 2003-149 (C.S.C.S.S.B. 1856) (West).
[7] 2005 Fla. Sess. Law Serv. Ch. 2005-100 (C.S.S.B. 656) (West).

- In 2007, H.B. 123 provided that all complainants and witnesses must be interviewed before the officer's interrogation, and information from interviews will be provided to the officer prior to the interrogation.[8]
- In 2009, S.B. 624 allowed officers to review all existing evidence prior to the officer being interrogated "including, but not limited to, incident reports, analyses, GPA locator information, and audio or video recordings relating to the investigation." If a compliance violation is found to be intentional by an agency or interrogator, notice of the violation will be made known to the agency head or designee and a compliance review hearing will take place to determine whether the violation was intentional. "The review panel members shall be law enforcement officers or correctional officers who are active from the same law enforcement discipline as the officer requesting the hearing."[9]
- In 2020, H.B. 573 stipulated a complaint of officer misconduct can originate from any source for disciplinary action and allows a law enforcement and correctional agency to request a separate agency to investigate. This act took effect on July 1, 2020.[10]

Florida's Law Enforcement Officers' and Correctional Officers' Rights statute has received media attention regarding the 1993, 2007, and 2009 amendments:

- Regarding the 1993 amendment to the statute, deputy sheriffs valued the extension of protections when sheriffs fire and demote deputies, while sheriffs opposed the addition seeing it as a loss to their "right to act unilaterally."[11]
- Regarding the 2007 amendment to the statute, members of the civilian panel and community activities were upset with the involvement of police unions in creating the protections that LEOs receive allowing them to view all evidence against them before giving a statement as more than just impartial treatment.[12]
- Regarding the 2009 amendment to the statute, state sheriffs and police chiefs, including the Tampa Police Chief who wrote that the bill was a "bad law that helps bad cops," are among those who view the bill as an obstacle to rid law enforcement of officers who abuse their position and mistreat the community they were sworn to protect and serve because the revision would make it more difficult for these officers to be disciplined but allows such officers to stop the investigation process if a violation of the disciplinary process occurs.[13]

[8] 2007 Fla. Sess. Law Serv. Ch. 2007-110 (C.S.H.B. 123) (West).
[9] 2009 Fla. Sess. Law Serv. Ch. 2009-200 (C.S.S.B. 624) (West).
[10] 2020 Fla. Sess. Law Serv. Ch. 2020-104 (C.S.C.S.H.B. 573) (West).
[11] Steve Bousquet, *Ex-Deputies Lobby for Job Security*, The Miami Herald (Feb. 5, 1993).
[12] Mario Ariza, *Complaints About Cops Suspended Critics Say Crisis Law Makes it Hard to Hold Police Accountable,* South Florida Sun-Sentinel (Aug. 23, 2020).
[13] *A 'Bad Law That Helps Bad Cops'*, St. Petersburg Times (May 11, 2009).

The Florida statute includes the following problematic provisions:

Restrictions on Interrogation Procedures:

- "The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer or correctional officer is on duty, unless the seriousness of the investigation is of such a degree that immediate action is required." § 112.532(1)(a).
- The interrogation must take place either at the office of the command of the investigating officer or at the office of the local precinct, police unit, or correctional unit in which the incident allegedly occurred. § 112.532(1)(b).
- Officer under investigation will be questioned by only one interrogator during any interrogation, unless waived. § 112.532(1)(c).
- LEO may take breaks between each interrogating session for "personal necessities and rest periods." § 112.532(1)(e).
- "The law enforcement officer or correctional officer under interrogation may not be subjected to offensive language or be threatened with transfer, dismissal, or disciplinary action. A promise or reward may not be made as an inducement to answer any questions." § 112.532(f).
- The formal interrogation shall be recorded to allow for a transcript to be made, and officer can receive a copy on 72 hours' notice. § 113.532(1)(g).
- LEO may have an attorney or representative present at all times during the investigation "whenever the interrogation relates to the officer's continued fitness for law enforcement." § 112.532(1)(i).

Time Limits on Disciplining Officers:

- The investigation must be completed within 180 days after the date the agency receives the complaint for any disciplinary action to be taken. § 112.532(6)(a). Statute of limitations is tolled during any criminal investigation or prosecution pertaining to the alleged misconduct. § 112.532(6)(a)(2).
- An investigation may be reopened notwithstanding the time limitation where (1) new evidence is discovered likely to affect the outcome and (2) the evidence could not have reasonably been discovered in the normal course of the investigation. An investigation must be completed within 90 days of receiving the complaint for reopened investigations. § 112.532(6)(b).

Officers Have Unfair Access to Information:

- Officers are given information civilians do not have before being interrogated including: the rank, name, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the investigation, § 112.532(1)(c); the nature of the investigation along with the names of all complainants; all witnesses are interviewed prior to the officer's interrogation; and all existing evidence is provided to the LEO, § 112.532(1)(d); if officer is likely to be arrested as a result of the interrogation, officer must be informed of this possibility before the interrogation begins. § 112.532(1)(h).
- Officers are given information after the investigation including: a complete copy of the investigative file if the officer is subject to disciplinary action. § 112.532(4)(b).

- Immediately before an investigative interview with complaint review board: the officer and his or her representative may review the complaint, all witness statements, and all existing evidence such as incident reports, analyses, GPS locator information, audio or video recordings. § 112.533(2)(a).

Possible Waiting Period Before an Officer is Interrogated:

- All identifiable witnesses shall be interviewed, whenever possible, prior to the beginning of the investigative interview of the accused LEO. § 112.532(d).

Limits Discipline:

- Complaint Review Board: A complaint review board shall typically be composed of three members; one member selected by the chief administrator of the agency or unit, one member selected by the aggrieved LEO, and a third member selected by the other two members; agencies with more than 100 officers shall utilize a five-member board consisting of two members selected by the administrator, two by the aggrieved LEO, and a fifth selected by the other four members. Board members shall be LEOs or corrections officers selected from any state, county, or municipal agency within the county, and the board members "shall be from the same discipline as the aggrieved officer" (this section shall not apply to sheriffs or deputy sheriffs). § 112.532(2).
- If disciplinary action is taken, the LEO is provided with a final copy of the investigative file and has an opportunity to address the findings with the employment law enforcement agency before any action is taken. § 112.532(4)(b).

Erases Misconduct Records:

- LEO may attach a statement in response to any items the officer views as derogatory in their personnel file, which they can review at any time under supervision. § 112.533(3).
- Any person who is a participant in an internal investigation (including the complainant) risks misdemeanor charges where they "willfully disclose" any information obtained pursuant the agency's investigation (including but not limited to the name of the LEO under investigation, the nature of the questions asked, the information revealed, or documents furnished in connection with investigation) before such information or documents become a public record. § 112.533(4).

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Please let us know if you need further information regarding Florida's Law Enforcement Officers' and Correctional Officers' Rights statute.

TO: NATIONAL URBAN LEAGUE

akerman

Law Enforcement Officer Bill of Rights Summary: Illinois

Illinois' Uniform Peace Officers' Disciplinary Act, 50 Ill. Comp. Stat. §§ 725/1, *et seq*., originally passed in 1983, and the statute has undergone seven (7) substantive revisions, most recently in 2020:

- In 1989, HB 39 added "any pay-grade investigator for the Secretary of State as defined in Section 14-110 of the Illinois Pension Code, not including Secretary of State sergeants, lieutenants, commanders, or investigator trainees" to definition of "officer," bringing those identified Secretary of State investigators within the statute's protections.[1]
- In the 1997 Regular Session, HB 1485 added peace officers employed by "a State college or university" to the definition of "officer," took out "supervisory" personnel.[2]
- In 2003, S.B. 946 amended 50 ILCS § 725/3.8 to add, "Anyone filing a complaint against a sworn peace officer must have the complaint supported by a sworn affidavit." Representative Brosnahan (D) indicated the Illinois State Police already implemented this affidavit requirement, and the bill passed unanimously in both houses.[3]
- In 2005, S.B. 1669 amended 50 ILCS § 725/3.4 to require that notice to investigated officer regarding who will be present "on behalf of the employer" in interrogation must be "in writing." The bill passed both houses without any opposition.[4]
- In 2007, H.B. 539 amended the change made in 1989 to include "Secretary of State sergeants, lieutenants, commanders, or investigator trainees" to the statute's definition of "officer." Representative Rose explained it was to codify state secretary of state procedure.[5]
- In 2011, H.B. 1985 provided for prosecution of anyone who swears an affidavit against an officer that contains "knowingly false material information." The bill passed both houses unanimously after the House added "knowingly false material" to the provision.[6]
- In 2020, H.B. 2653 amended § 725/3.2 so that an investigated officer is no longer given the names of all complainants; amended § 725/3.4 so that the officer is no longer given the name, rank, unit or command of the officer in charge of the investigation and everyone on the employer's behalf who will be in the interrogation; amended § 7.25/3.8 so that complaints against an officer no longer have to be supported by an affidavit or any other legal documentation, which applies to collective bargaining agreements going forward. The bill passed both houses without opposition.[7] These revisions became effective July 1, 2021.

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[1] 1989 Ill. Legis. Serv. P.A. 86-281 (H.B. 39) (West).
[2] 1998 Ill. Legis. Serv. P.A. 90-577 (H.B. 1486) (West).
[3] 2003 Ill. Legis. Serv. P.A. 93-592 (S.B. 946) (West); IL S. Tran. 2003 Reg. Sess. No. 56, p. 97; IL H.R. Tran. 2003 Reg. Sess. No. 58, pp. 60-61.
[4] 2007 Ill. Legis. Serv. P.A. 95-293 (H.B. 539) (West); IL H.R. Jour. 2005 Reg. Sess. No. 56; IL S. Jour. 2005 Reg. Sess. No. 50.
[5] 2007 Ill. Legis. Serv. P.A. 95-293 (H.B. 539) (West); IL H.R. Tran. 2007 Reg. Sess. No. 28, p. 3; IL S. Tran. 2007 Reg. Sess. No. 44, p. 2.
[6] 2011 Ill. Legs. Serv. P.A. 97-472 (H.B. 1985) (West); IL H.R. Jour. 2011 Reg. Sess. No. 67, p. 30; IL S. Jour. 2011 Reg. Sess. No. 50, p. 105.
[7] 2020 Ill. Legis. Serv. P.A. 101-652, p. 34 (H.B. 3653) (West); IL H.R. Jour. 2019 Reg. Sess. No 36, p. 24.

Illinois' Uniform Peace Officers' Disciplinary Act recently received media attention regarding the need to revise the statute so that collective bargaining agreements did not preempt the statute, and § 725/6 states that "[e]xcept otherwise provided in the Act], the provisions of this Act apply only to the extent there is no collective bargaining agreement currently in effect dealing with the subject matter of this Act."[8] Other media reports have focused on how the procedural protections the statute affords to investigated officers far exceeds police officers' treatment of civilian suspects, who are often interrogated late at night by multiple officers who often refuse breaks and use abusive language and false and misleading statements and promises of leniency or threats of harm in the interrogation process.[9] The statute's 48-hour waiting period has also been criticized for giving officers time to develop favorable narratives, with police unions arguing that the time is necessary because "a couple of nights of sleep helps restore an officer's memory, especially after the trauma of fatal shooting."[10]

The Illinois statute includes the following problematic provisions:

Restrictions on Interrogation and Investigation Procedures:

- Interrogation shall take place at the facility to which the investigating officer is assigned, or at the precinct which has jurisdiction over the place where the alleged underlying incident took place. § 725/3.1.
- All interrogations must occur at a reasonable time of day, ideally during the time when officer is on duty. § 725/3.3.
- Interrogation sessions must be reasonable duration with reasonable rest periods in between. § 725/3.5.
- Interrogated officer must not be subjected to professional or personal abuse, offensive language. § 725/3.6.
- "No officer shall be interrogated without first being advised in writing that admissions made in the course of the interrogation may be used as evidence of misconduct or as the basis for charges seeking suspension, removal, or discharge; and without first being advised in writing that he or she has the right to counsel of his or her choosing who may be present to advise him or her at any stage of any interrogation." § 725/3.8(a).
- LEO has the right to be represented by counsel and have them present during all interrogation. The interrogation will stop so the officer can have a reasonable time and opportunity to obtain counsel. § 725/3.9.
- No officer is required to submit to a polygraph or drug test, and such refusal cannot be used against the LEO for any disciplinary action. § 725/3.11.

Officers Have Unfair Access to Information:

- Officers are given information civilians do not have access to before being interrogated including written notice of the nature of investigation, §725/3.2.
- Officers are given information after the investigation including a final record of all interrogations without charge or undue dely. § 725/3.7.

[8] Ed Bachrach and Austin Berg, *Chicago's police union contract thwarts reform*, Chicago Tribune (June 7, 2020) (editorial).
[9] Steven A. Drizin, *Good reason to tape suspect's interrogation*, Chicago Sun-Times (June 30, 2002) (editorial).
[10] Michael Tarm, *Laws, contracts can give police buffer after fatal shootings*, Chicago Daily Herald (Jan. 13, 2016).

Limits Discipline:

- An officer will not be threatened with disciplinary actions during the investigation. § 725/3.6.
- Collective bargaining agreements can limit discipline, and § 725/6 provides that "[e]xcept as otherwise provided in this Act, the provisions of this Act apply only to the extent there is no collective bargaining agreement currently in effect dealing with the subject matter of this Act."

Limits Oversight:

- Admissions or confessions obtained during the course of an interrogation not conducted in accordance with the Bill of Rights may not be utilized in any subsequent disciplinary proceeding against the officer. § 725/3.10.

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Please let us know if you need further information regarding Illinois' Uniform Peace Officers' Disciplinary Act.

TO: NATIONAL URBAN LEAGUE

akerman

Law Enforcement Officer Bill of Rights Summary: Indiana

Indiana's Rights of Police Officers statute, Ind. Code § 36-8-2.1-1 *et seq*., passed into law during the state's 2019 legislative session, originally becoming effective on July 1, 2019.[1] The statute passed the Indiana House of Representatives by a vote of 61-18[2] and the state Senate by 43-3.[3] The statute was subsequently amended in the 2020 legislative session to add firefighters to its coverage by defining "public safety officer" to include both police officers and firefighters.[4]

Indiana's relatively new Rights of Police Officers statute has received relatively scant media attention. In a candidate forum in Columbus, Indiana in October 2020, state Rep. Ryan Lauer (R, incumbent) characterized current political discourse regarding police reform as "dangerous and unwarranted," noting that he was a co-sponsor of the Police Officers' Bill of Rights. He also said he supports the development of strong ties between police and their communities.[5] Rep. Lauer won reelection.

The Indiana statute includes the following problematic provisions:

Restrictions on Interrogation Procedures:

- Interviewer must also be a police officer. Ind. Code § 36-8-2.1-2.1.
- The interview must be conducted at a reasonable hour, preferably when the police officer is on duty, unless the interviewing officer determines the seriousness of the investigation requires an immediate review. Ind. Code § 36-8-2.1-5(b)(1).
- The interviewing officer must present the investigated officer with a statement of rights to be signed by the interviewing officer and the investigated officer. Ind. Code § 36-8-2.1-5(b)(4). Those rights include the right against self-incrimination and that the officer's statement cannot be "used in any subsequent criminal court action against [the officer]." The statement of rights also informs the officer that his or her statement to investigators is discoverable in civil rights litigation, may be used to impeach the officer, and may be used in a criminal proceeding in which the officer is a witness. *Id*.
- "An interview session must be for a reasonable period of time and allow for personal necessities and rest periods as reasonably necessary." Ind. Code § 36-8-2.1-5(b)(6).
- Either party can request that an interview be tape recorded, and the investigated officer must receive a written transcript upon request at no charge to the officer. Ind. Code § 36-8-2.1-5(b)(7).

[1] 2019 Ind. Legis. Serv. P.L. 271-2019 (S.E.A. 79) (West).
[2] The "nay" votes were Reps. Bartlett, Beck, Boy, Campbell, Cook, Eberhart, Engleman, Gutwein, Jackson, Jordan, Negele, Pierce, Prescott, Pryor, Saunders, Schaibley, Shackleford, and Sullivan.
[3] The "nay" votes were Sens. Lanane, Stoops, and Taylor.
[4] 2020 IN Legis. Serv. P.L. 33-2020 (H.E.A. 1015) (West).
[5] Mark Webber, *Lauer, Nowlin speak out in candidates forum*, The Republic (Oct. 21, 2020), http://www.therepublic.com/2020/10/21/lauer-nowlin-speak-out-in-candidates-forum/.

- Any questions asked of the police officer must "specifically, directly, and narrowly relate to the performance of duties or fitness for service as a public safety officer." Ind. Code § 36-8-2.1-5(b)(10).
- The police officer has the right to request that an attorney or other representative (not both) be present during the interview and has up to seventy-two hours from the time of the request to obtain representation, unless a longer time is agreed to by the parties. However, the officer's representative may only advise the officer and may not otherwise participate in the interview. Ind. Code § 36-8-2.1-5(b)(11).

Officers Have Unfair Access to Information:

- "The investigating officer must inform the police officer of the name, rank, and assignment of the officer in charge of the investigation, the interviewing officer, and all other persons present during the interview." Ind. Code § 36-8-2.1-5(b)(3).[6]
- In a noncriminal case, the officer in charge of the investigation must provide the investigated officer with a copy of the complaint. Ind. Code § 36-8-2.1-5(b)(5). In a criminal case, the officer in charge of the investigation must inform the police officer of the nature of the complaint. The officer in charge of the investigation is not required to disclose the name of the complainant to the investigated officer. *Id*.

Possible Waiting Period Before an Officer Is Interrogated:

- Officer has up to seventy-two hours from the time of the request for an interview to obtain representation, unless a longer time is agreed to by the parties. Ind. Code § 36-8-2.1-5(b)(11).

Limits Discipline:

- Collective bargaining agreements are often cited as barriers to police reform: This statute specifically "does not affect a contract concerning police officers executed or renewed before July 1, 2019," which is likely designed to protect existing collective bargaining agreements. Ind. Code § 36-8-2.1-6.

* * * * *

Please let us know if you need further information regarding Indiana's Rights of Police Officers statute.

[6] In 2020, the Illinois legislature passed H.B. 2653, which amended 50 ILCS § 725/3.4 so that the investigated officer is no longer given the name, rank, unit or command of the officer in charge of the investigation and everyone else on the employer's behalf who will be in the interrogation. 2020 Ill. Legis. Serv. P.A. 101-652, p. 34 (H.B. 2653) (West).

TO: NATIONAL URBAN LEAGUE

akerman

Law Enforcement Officer Bill of Rights Summary: Iowa

Iowa's Peace Officer, Public Safety, and Emergency Personnel Bill of Rights statute, Iowa Code § 80F.1, originally became effective on May 15, 2007.[1] The state legislature has revised the statute only once, in the 2021 legislative session, with these revisions becoming effective on July 1, 2021:

- Section 17.a, definition of "Complaint" was revised to specify that an officer's transcription of an individual's oral complaint against an officer must still be signed.
- Section 5.a specified legal counsel can be present during hearings and other administrative proceedings regarding a complaint.
- Section 8.b was added, which provides confidentiality for communications between an investigated officer and legal counsel, union representatives, and employee representatives, discussed further in "Limits Oversight" below.
- Section 13 was revised, regarding an officer's private cause of action for false complaints, discussed further in "Limits Discipline" below.
- Section 20 was added, protecting discipline records from public release, discussed further in "Limits Oversight" below.
- Section 23.a was added, which states an officer cannot be disciplined solely because a prosecutor determines the officer withheld exculpatory evidence, discussed further in "Limits Discipline" below.
- Section 21 also established a study commission to examine the processes involved when an officer is placed on a "Brady-Giglio list," which the statutes defines as a "list of officers maintained by the county attorney's office, including officers who may not have disclosed all impeachment information and officers who may have violated the pretrial discovery rule requiring officers to turn over all evidence that might be used to exonerate a defendant." The commission is to report its findings to the general assembly by December 16, 2021.[2]

Media coverage of the 2021 revision to the statute showed it was sponsored by House Republicans, with some House Democrats objecting. However, it passed the state senate without opposition. Iowa's policies were described as a "mixed bag," as "[t]he state has taken steps to change policing banning most chokeholds, requiring yearly de-escalation and implicit bias training and allowing the state's attorney general to investigate deaths caused by an officer-while also moving to protect police officers."[3]

The Iowa statute includes the following problematic provisions:

[1] 2007 Ia. Legis. Serv. Ch. 160 (West) (S.F. 457).
[2] 2012 Ia. Legis. Serv. Ch. 183 (West) (S.F. 342).
[3] Erik Ferkenhoff and Ian Richardson, *States revise policing policy; Iowa is among states enacting new laws after George Floyd's death. Wide differences aren't always based on partisanship*, Des Moines Register (May 5, 2021).

Restrictions on Interrogation Procedures:

- Section 6: An officer being interviewed shall be advised by the interviewer that the officer shall answer the questions and be advised that the answers shall not be used against the officer in any subsequent criminal proceeding.
- Section 8(a): The officer shall have the right to have the assistance of legal counsel, at the officer's expense, during the interview of the officer and during hearings or other disciplinary or administrative proceedings relating to the complaint. In addition, the officer shall have the right, at the officer's expense, to have a union representative present during the interview or, if not a member of a union, the officer shall have the right to have a designee present.

Time Limits on Disciplining Officers:

- Although the statute does not give a specific statute of limitations, it requires the completion of an investigation in a "reasonable time," which is subject to interpretation and potential litigation: Section 3: A formal administrative investigation of an officer shall be commenced and completed in a reasonable period of time. An officer shall be immediately notified in writing of the results of the investigation when the investigation is completed.

Officers Have Unfair Access to Information:

- Although the statute provides the officer with more information before an interrogation than civilians receive, there is an exception for circumstances for some sensitive matters: Section 5: An officer who is the subject of a complaint, shall at a minimum, be provided a written summary of the complaint prior to an interview. If a collective bargaining agreement applies, the complaint or written summary shall be provided pursuant to the procedures established under the collective bargaining agreement. If the complaint alleges domestic abuse, sexual abuse, workplace harassment, or sexual harassment, an officer shall not receive more than a written summary of the complaint.

Limits Discipline:

- An officer can forestall discipline by alleging a violation of the statute's procedures: Section 19: If a formal administrative investigation results in removal, discharge, suspension, or disciplinary action against an officer, and the officer alleges in writing a violation of the provisions of this section, the municipality, county, or state agency employing the officer shall hold in abeyance for a period of ten days any punitive action taken as a result of the investigation, including a reprimand. An allegation of a violation of this section may be raised and given due consideration in any properly authorized grievance or appeal exercised by an officer, including but not limited to a grievance or appeal exercised pursuant to the terms of an applicable collective bargaining agreement and an appeal right exercised under civil service appeals statutes.
- An officer cannot be disciplined solely because a prosecutor determines the officer withheld exculpatory evidence: Section 23(a): An officer shall not be discharged, disciplined, or threatened with discharge or discipline by a state, county, or municipal law enforcement agency solely due to a prosecuting attorney making a determination or disclosure that exculpatory evidence exists concerning the officer.
- Providing officers with a private cause of action for filing a false complaint may inhibit meritorious complaints for fear of retaliation if the complainant is not believed: Section 13: "An officer shall have the right to bring a cause of action against any person, group of

persons, organization, or corporation for damages arising from the filing of a false complaint against the officer or any other violation of this chapter including but not limited to actual damages, court costs, and reasonable attorney fees."

Limits Oversight:

- Records of complaints and investigations are kept confidential: Section 20: The employing agency shall keep an officer's statement, recordings, or transcripts of any interviews or disciplinary proceedings, and any complaints made against an officer confidential unless otherwise provided by law or with the officer's written consent. Nothing in this section prohibits the release of an officer's statement, recordings, or transcripts of any interviews or disciplinary proceedings, and any complaints made against an officer to the officer or the officer's legal counsel upon the officer's request.
- Section 8.b added a privilege to communications between an investigated officer and his or her union representative or employee representative: "The officer's legal counsel, union representative, or employee representative shall not be compelled to disclose in any judicial proceeding, nor be subject to any investigation or punitive action for refusing to disclose, any information received from an officer under investigation or from an agent of the officer, so long as the officer or agent of the officer is an uninvolved party and not considered a witness to any incident. The officer's legal counsel may coordinate and communicate in confidence with the officer's designated union representative or employee representative, and such communications are not subject to discovery in any proceeding."

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Please let us know if you need further information regarding Iowa's Peace Officer, Public Safety, and Emergency Personnel Bill of Rights statute.

TO: NATIONAL URBAN LEAGUE

akerman

Law Enforcement Officer Bill of Rights Summary: Kentucky

Kentucky has three different statutes related to what is known as the "Police Officer's Bill of Rights," depending on the size and location of the county where the officer works.

A. KRS § 15.520

The first statute, Complaints Against Police Officers, Ky. Rev. Stat. Ann. § 15.520, most recently effective April 12, 2021, and originally passed in 1980, has undergone several revisions, most recently in 2015 and 2018.

B. KRS § 95.450

The second statute, an act relating to complaints against police officers in urban-county governments, is found in Ky. Rev. Stat. Ann. § 95.450 and is entitled Discipline of Members of Police and Fire Departments in Urban-County Governments and Cities on DLG's Registry of Cities that Belonged to the Second and Third classes.

C. KRS § 95.765

The third statute, initially approved of by the governor on February 18, 1942 and known as Ky. Rev. Stat. Ann. § 95.765, has been amended since and is entitled "Removal or reduction in grade; grounds; procedure; suspension; punishment (Cities with Population of 1,000 to 7,999)." Of note, there were no substantive changes as a result of the most recent 2016 amendments.

Legislative History

A. KRS § 15.520

On April 4, 1986, amendments to the 1980 KRS § 15.520 were made providing "that a police officer suspended without pay shall have charges against him dismissed and be reinstated with back pay if he is not granted a hearing." The statute was amended again on Tuesday, February 22, and March 8 of 1990. Some of the amendments at issue concerned requiring within 24 hours, and in writing, a statement of the reasons for a suspension of a police officer, requiring exculpatory statements or affidavits that are considered by a hearing authority to be provided to the police officer at least 72 hours before the hearing, and permitting a police officer to raise failed procedural questions with the hearing authority but prohibiting the exclusion of proffered evidence unless the evidence lacked weight or credibility or the officer was materially prejudiced. The amendments were signed into law on March 23, 1990.

Later, at the Seventh Meeting of the 1994 Regular Session, on March 3, 1994, Representative Dave Stengel moved to "put police officers on a more equal footing with others, by giving them subpoena power." The motion and bill passed by a vote of 14 yeas, 1 nay, and 0

passes. On April 8, 1994, the amendments to KRS § 15.520 permitting officers to apply to a Circuit Judge for subpoenas to compel the attendance of witnesses or production of evidence at hearings were signed into law.

At the 2015 Regular Session, KRS § 15.520 was further amended to "extend procedural due process rights to police officers in intradepartmental disciplinary actions" following several state court decisions holding that the due process rights guaranteed by KRS § 15.520 were only applicable to police officers accused of wrongdoing by citizens. Accordingly, the statute was amended to apply to "officers" employed as full-time police officers by units of government that receive funds from the Law Enforcement Foundation Program, and who have completed an officially established initial probationary period of employment. A bill was introduced to provide expanded procedures for processing both criminal and non-criminal citizen complaints, and accusations of violations of procedures within the law enforcement agency employing the officer.

The bill added a section including extensive new language setting forth standards and procedures for ensuring the professional conduct of police officers of consolidated local governments, the fair adjudication of such complaints, and due process rights for officers. The section set forth administrative procedures and due process rights for consolidated local government police officers when adjudicating an officer's conduct, both criminally and civilly, and listed nine minimum administrative due process rights to be afforded to charged police officers. Of note, under the expanded rights, the failure to follow the procedural guarantees established in the Police Officer Bill of Rights could result in adjournment of the proceedings and the award of back pay and benefits. The amendments were signed into law on April 3, 2015.

The most recent amendments to KRS § 15.520 in 2018 concerned the annual training stipend for conservation officers and has no bearing on the procedural due process rights at issue in this report.

B. KRS § 95.450

Unfortunately, there is no web access to certain legislative history for KRS § 95.450 for the years 1942, 1956, 1974, and 1976, but our Research Services department reached out to the Legislative Research Commission in Kentucky (the "Commission") for this information. The Commission responded that the bill cited predates meetings being audiotaped or videotaped or session committee minutes. Further, the Commission only has journals from 1944 and forward, and noted that the 1976 extra session (section 121) is very lengthy and would take roughly a week for the Commission to provide via photocopying. Notwithstanding, the Commission was able to provide Legislative Record Entries and minutes from the Interim Joint Committee and minutes from the Interim Joint Committee On Judiciary – Courts 11/30/76 meeting, which is discussed below. The Legislative Record entry for 1976 Extraordinary Session SB 15 references the 11/30/76 meeting and is discussed below. Of final note, the Commission stated that it did not have the final executive action for that meeting, only the final legislative action which is why the entry ends with "delivered to governor."

KRS § 95.450 was enacted in 1942 and published in the 1944 Kentucky Revised Statutes.

In 1956, KRS § 95.450 was amended as applied to "cities of the second and third classes" and mostly followed the same multi-sectioned section format as present day, having six (6) sections, and becoming law on March 1, 1956. On April 2, 1974, the statute was amended to add the phrase "urban county government."

The statute was amended again on December 22, 1976. The amendments provided subpoena power for witnesses who failed to appear or testify and allowed for a contempt remedy. The section was also amended to permit in cities of the second and third classes and urban county governments the withdrawal and dismissal of charges against a policeman at any time prior to the conclusion of a hearing, to prohibit the continuance of a disciplinary hearing unless consented to by the accused person, and to abolish the minimum penalty requirements for appeal.

Then, during the during the Seventh Meeting of the 1990 General Assembly discussing KRS § § 95.450, Representative Denver Butler explained the bill and Representative Bill Leer moved, seconded by Representative Marshall Long, to include language in the statute asserting that "prior to or within 24 hours after suspending the officer pending investigation or disposition of a complaint, the officer shall be advised in writing of the reasons of the suspension." The bill passed with 15 votes "Yes" and no "No" votes.

In 2014, during the Thirtieth Legislative Day of the 2014 Regular Session and on February 19, 2014, KRS § 95.450 was amended to state that the provisions of the statute were to apply only "to members of police and fire departments in urban-county governments and those cities that are included in the in the Department for Local Government registry created pursuant to subsection (9) of th[e] section." Additionally, two (2) additional sections were added to the currently, seven (7) sections statute. The two (2) sections added, subsection (8) and (9) read as follows:

> (8) A member of a police or fire department found guilty pursuant to the provisions of this section shall have the right to appeal to the Circuit Court under the provisions of Section 113 of this Act.
> (9) On or before January 1, 2015, the Department for Local Government shall create a registry of cities that shall be required to comply with the provisions of this section. The Department for Local Government shall include each of those cities on the registry that were classified as cities of the second or third class as of January 1, 2014. The Department for Local Government shall make the information included on the registry available to the public by publishing it on its Web site.

The governor signed the amendments into law on April 10, 2014. The sections took effect January 1, 2015.

C. KRS § 95.765

On February 18, 1942, the governor signed KRS § 95.76, which was in the form of a long section (entitled Section VI. Removal of Policeman or Firemen) which was not separated by individual sections. Then, on December 22, 1976, similar to KRS § 95.450, subpoena powers were written into the statute so that witnesses could be subpoenaed to appear or testify and punished with contempt for failing to do so. Further, the statute was divided into sections.

More recently, KRS § 95.765 was amended to change statutory numbering references with no impact on the procedural due process rights at issue here.

Unfortunately, there is no web access to certain legislative history from 1942 and 1976, but our Research Services is reaching out to the Legislative Research Commission in Kentucky for these missing sections and we will supplement with any important information.

News Coverage

Back in 2000, the Courier-Journal in Louisville, Kentucky reported on certain proposed measures to the Officers' Bill of Rights requiring that complaints against officers be filed within 60 days of the incident or 60 days after any criminal case is adjudicated.[1] Lexington Police Chief Larry Walsh "said the measure ma[de] it harder for people to file complaints against police and could erode an already strained relationship between departments and the people they protect - especially Blacks."[2] Walsh said, "It's my feeling that these proposed changes will further polarize the police and the Black community."[3] Walsh also stated that sometimes "legitimate complaints don't arise for well over 60 days because victims are frequently scared or don't understand their rights, especially since the state's Hispanic population is rising rapidly."[4] Walsh further stated that other components of the bill also caused him concern.[5] For example, he argued that "having lawyers present during interviews could slow the process and make it more difficult to get at the truth."[6] And he stated that "providing full reports to officers accused of violating rules could intimidate witnesses and victims, since their names and addresses would be included."[7]

In 2006, the Urban County Government faced a lawsuit from a former Lexington police officer, alleging that "he was forced to resign because he is Hispanic and that some officers targeted Hispanics 'for easy arrests.'"[8] The article noted that the "lawsuit was filed as the police department [wa]s trying to overcome public relations fallout from a report that several Lexington police officers maintained Web sites that used derogatory language about gays and the mental disabled."[9] Police Chief Anthony Beatty "said police [we]re working hard to hire more minorities and women."[10]

In 2008, concerns were raised regarding the Officers' Bill of Rights prohibiting anyone from speaking about allegations against police officers until after any proposed punishments has

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[1] Joseph Gerth, *2000 Kentucky General Assembly; Panel OKs bill to expand rights of police officers*, Courier-Journal (Louisville), Feb. 10, 2000.
[2] *Id.* at p. 2.
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] Brandon Ortiz, *Hispanic ex-police officer sues; Says department forced him to quit*, Lexington Herald Leader (Kentucky), Apr. 29, 2006.
[9] *Id.* at p. 2.
[10] *Id.*

been approved.[11] Not only do some consider that this limits oversight, but according to one article by the Lexington Herald Leader, the law also hinders council members reviewing the proposed punishment because the information they are provided is limited.

In one specific instance, there were two complaints against an officer that the council was reviewing, including one complaint for "excessive force."[12] However, the complaint was presented to the council with little details of what actually happened.[13] The reasoning behind not providing details is because "[i]f the officer does not accept the proposed punishment, or the council does not approve it, the council must hold a full hearing, where the council acts as the jury." As such, too much information could prejudice the council if a hearing results.

Council members of the Lexington-Fayette Urban City Council in Kentucky expressed concern about the lack of information when reviewing officer discipline decisions, noting that "it's often difficult to determine if the punishment recommended – which can vary from a six-month suspension without pay to a written reprimand – is appropriate."[14]

Further, because of the current laws, details regarding a council's review of officer discipline would be automatically released. In fact, the public is required submit an Open Records Act request to get documents. Thus, details may not be released until three to four days after the discipline is approved.[15] Incredibly, one councilmember vowed to vote against discipline in all actions because he "felt the information provided to the council [wa]s inadequate."[16] What is more, another news outlet reported that five officers actually sued the Louisville police department after an internal report was released to the public.[17] The report detailed an internal investigation into the alleged murder of a man who was arrested on charges of beating his girlfriend and died six days later in the Jefferson County Jail.[18] While five officers were cleared in an internal-affairs investigation, the report noted that one officer was reprimanded "for failing to report that he struck [the decedent] with a flashlight, then lost it."[19] The newspaper that released the report stated "that it obtained the summary through routine practices" and was not listed as a defendant in the lawsuit.[20]

Based on these concerns with council review of proposed disciplinary actions in Lexington, Vice Mayor Steve Kay proposed changes to the law at an October 8, 2020.[21] The changes would allow for providing councilmembers "as much information as possible about the allegations or

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[11] Beth Musgrave, *'Rubber stamp?' Lexington council votes to adjust police disciplinary procedures*, Lexington Herald Leader (Kentucky), Oct. 14, 2020.
[12] *Id.* at p. 2.
[13] *Id.*
[14] Beth Musgrave, *'Rubber stamp?' Lexington council votes to adjust police disciplinary procedures*, Lexington Herald Leader (Kentucky), Oct. 14, 2020.
[15] *Id.*
[16] *Id.*
[17] Mark Schaver, *4 more sue over release of Reynolds-arrest report; Judge consolidates police officers' lawsuit with one filed earlier*, Courier-Journal (Louisville), June 27, 2000.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] Beth Musgrave, *'Rubber stamp?' Lexington council votes to adjust police disciplinary procedures*, Lexington Herald Leader (Kentucky), Oct. 14, 2020.

charges against an officer," "[r]equiring the police chief to present officer disciplinary actions involving a member of the public or an action an officer took that involved a member of the public," and "[p]rohibiting council members from seeking additional information from the police about the alleged wrongdoing prior to council approval."[22] However, additional issues are expected to arise, including that it becomes unclear what information is or is not included in any police presentation to the council.[23]

Back in 2015, the General Assembly made the Police Officer Bill of Rights "applicable only to citizen complaints and only those internal matters that involve the use of peace officer powers."[24] Therefore, the statute was not applied to internal matters that relate to general employment issues.[25] The definition of "discipline action" was limited to include "termination, demotion, suspension without pay, and written reprimand."[26] Additionally, the definition of "interrogation" was limited to mean "a formal investigative interview" and not to mean "conversations or meetings supervisory personnel and subordinate officers that are not intended to result in disciplinary action, such as conversations or meetings held for the purpose of providing corrective instruction, counseling, or coaching."[27] Some say this revision created an "extreme loophole."

An article in the Lexington Herald Leader took issue with the fact that the "vast majority of complaints against police officers" are classified as "informal complaints—which are handled by the officer's supervisors," and then can "only be handled by coaching and counseling forms."[28] By example, in 2019 there were 215 "informal complaints compared to 20 formal complaints."[29]

Fraternal Order of Police Bluegrass Lodge 4 President Jonathan Bastian claimed that if a citizen was not satisfied with the resolution of informal complaints, those incidents could be referred to the public integrity unit and investigated as a formal complaint.[30] Of concern, however, Bastian admitted that the Fraternal Order of Police "has made it difficult to go after and terminate bad officers" by lobbying the General Assembly to make changes over the years.[31] He was quoted as saying that "[t]he way this disciplinary process works is more of a protectionary process than to root out bad officers."[32] The "extreme loophole" noted in the article is the fact that most complaints are routed through the informal complaint process.[33] Further, Bastian noted that "the only forms removed from officer's files are coaching and counseling forms after 12 months." He

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[22] *Id.*
[23] *Id.*
[24] J.D. Chaney & Bryanna Carroll, *Police Officer Bill of Rights and Other City Legislation Passes*, Kentucky League of Cities, Dec. 26, 2018.
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] Beth Musgrave, *Loopholes or due process? Lexington council police discipline debate goes to day* 2, Lexington Herald Leader (Kentucky), June 17, 2020.
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*

claimed that "counseling forms are not considered disciplinary actions," while conceding that they are related to "performance issues."[34]

Additionally, a lawyer for the City of Lexington noted that the Officer's Bill of Rights lays out disciplinary procedures and "prohibits anyone from commenting on a police officer's pending disciplinary action until after that disciplinary action is finalized."[35] Following the death of Breonna Taylor, protesters asked that limits on access to a police officer's files "be removed to create more transparency," but Bastian claimed that this limitation "prohibit[s] officers from looking at another officer's personnel files," and that the "information is still available to the public…through an Open Records Act request," while also attempting to assure the public that disciplinary actions "remain in the police officer's file."[36]

Notwithstanding, another concern is that "racial profiling of Black people happens all the time in Lexington by Lexington Police."[37] Rev. David Peoples gave an anecdotal account stating that when his "28-year-old son was recently home from the military and standing outside Peoples' house…a police officer stopped and asked to see his identification to make sure he lived in that home."[38]

Advocacy groups in Kentucky have called for "federal oversight and a citizens' review board, each charged to independently investigate every deadly police encounter" in response to several high-profile police shootings that began in the 1990s.[39] Following these shootings, the City of Louisville established a civilian review board, but it was challenged by the Fraternal Order of Police and not re-established.[40] The board was replaced by the Citizen's Commission on Police Accountability, the 10-member board discussed above which is appointed by the mayor.[41] The article reiterated that the commission does not have investigative powers but instead "reviews the police department's internal investigation, evaluates if it was thorough and notes if there were gaps in policy or training that might have prevented the killing."[42]

It appears the community prefers "a board selected by the people, empowered to independently investigate allegations of police abuses, particularly those that claim a life."[43] The status quo has been described as "police are policing themselves" and "not an adequate investigation."[44] "Currently, the Police Officer's Bill of Rights holds that a non-governmental agency cannot compel an officer to give a statement, and [] would require state legislation to change."

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[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.* at p. 4.
[38] *Id.*
[39] Claire Galofaro, *More LMPD shootings resulting in FATALITIES,* Courier-Journal (Louisville), Dec. 14, 2014.
[40] *Id.* at p. 3.
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*

Police shootings are investigated by the Public Integrity Unit within the police department and turned over to the Commonwealth's Attorney for a decision on whether to pursue charges.[45] Of the 59 incidents over the last decade, however, only one has resulted in criminal charges.[46] All other officers involved in shootings between 2005 and 2014 were exonerated by the Commonwealth's Attorney.[47] Milton Seymore, who runs the Justice Resource Center, criticized the investigation process as a means to justify officers' actions.[48]

In 2020, it was noted that the Police Officers Bill of Rights prevents accountability by prohibiting officers from being interviewed until at least 48 hours after a shooting or other incident and prevents past misconduct, including suspensions and reprimands, from being considered in discipline after a set number of years have passed.[49] Along those lines, the "Problematic Provisions" of each section are listed below.

Problematic Provisions

A. KRS § 15.520

KRS § 15.520 includes the following problematic provisions:

Restrictions on Interrogation Procedures:

- "No threats, promises, or coercions shall be used at any time against any officer while he or she is a suspect in a criminal case or has been accused of a violation of law enforcement procedures. Suspension from duty with or without pay, or reassignment to other than an officer's regular duties during the period shall not be deemed coercion." Ky. Rev. Stat. Ann. § 15.520(5)(b).
- "The interrogation shall be conducted while the officer is on duty." Ky. Rev. Stat. Ann. § 15.520(5)(d).

Time Limits on Disciplining Officers:

- Charges will be dismissed with prejudice against a suspended officer if he or she does not receive a hearing within 75 days from being charged: "If any officer who has been suspended with or without pay is not given a hearing as provided by this section within seventy-five (75) days of any charge being filed pursuant to this section, the charge shall be dismissed with prejudice and shall not be considered by any hearing authority and the officer shall be reinstated with full back pay and benefits." Ky. Rev. Stat. Ann. § 15.520(7)(h).

Officers Have Unfair Access to Information:

- "[A] notice of interrogation shall include a statement regarding any reason for the interrogation and shall be served on the officer by certified mail, return receipt requested, or by personal delivery." Ky. Rev. Stat. Ann. § 15.520(5)(c).

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[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] Andrew Wolfson, *Prescription for change; 21 ways Louisville could reform police and curb their use of* force, Courier-Journal (Louisville), Aug. 30, 2020.

Possible Waiting Period Before an Officer is Interrogated:

- "Unless otherwise agreed to in writing by the officer, no police officer shall be subjected to interrogation for alleged conduct that violates law enforcement procedures, until forty-eight (48) hours have expired from the time the request for interrogation is made to the accused officer, in writing. The notice of interrogation shall include a statement regarding any reason for the interrogation and shall be served on the officer by certified mail, return receipt requested, or by personal delivery." Ky. Rev. Stat. Ann. § 15.520(5)(c)(emphasis added).

Limits Discipline:

- Without a sworn affidavit, some citizen complaints may not be investigated: If a citizen complains of an officer's criminal conduct, no affidavit is required, but if the citizen complains of violations of law enforcement procedures or the police department's general employment policies, the department will investigate the complaint if the citizen provides a sworn affidavit to support the complaint; without an affidavit in that scenario, the department "may investigate the allegations" but can only bring charges against the officer if the department can independently substantiate the allegations. Ky. Rev. Stat. Ann. § 15.520(3)(a)-(c).
- Accused officers have an automatic right to a hearing upon accusations by anyone within the police department that the officer violated law enforcement procedures. Ky. Rev. Stat. Ann. § 15.520(4)(a).
- If the citizen who complained against an officer does not appear at the hearing, it will be dismissed with prejudice: "If the return receipt [of the notice to the citizen of the hearing] has been returned unsigned, or the individual does not appear, except due to circumstances beyond his or her control he or she cannot appear at the time and place of the hearing, any charge resulting from a complaint made by that citizen shall not be considered by the hearing authority and shall be dismissed with prejudice." Ky. Rev. Stat. Ann. § 15.520(7)(d).

Limits Oversight:

- "No officer as a condition of continued employment by the employing agency shall be compelled to speak or testify or be questioned by any person or body of a nongovernmental nature." Ky. Rev. Stat. Ann. § 15.520(6)(d).
- "When an officer has been charged with a violation of law enforcement procedures, no public statements shall be made concerning the alleged violation by any person or persons of the employing agency or the officer so charged, until final disposition of the charges." Ky. Rev. Stat. Ann. § 15.520(6)(d).
- Hearings are conducted in private: "To the extent the provisions of [the Kentucky Open Meetings Statute] are applicable, the hearing authority may conduct the hearing required by this subsection in a closed session, unless the officer requests of the hearing authority in writing at least three (3) days prior to the hearing that the hearing be open to the public." Ky. Rev. Stat. Ann. § 15.520(7)(k).

B. KRS § 95.450

KRS § 95.450 includes the following problematic provisions:

Limits Discipline:

- [N]o member of the police or fire department in cities listed on the registry…or an urban-county government shall be reprimanded, dismissed, suspended or reduced in grade or pay for any reason except inefficiency, misconduct, insubordination or violation of law or of the rules adopted by the legislative body, and only after charges are preferred and a hearing conducted as provided in this section. Ky. Rev. Stat. Ann. § 95.450(2).
- Probable Cause is the Standard: The mayor shall, whenever probable cause appears, prefer charges against any member whom he believes guilty of conduct justifying his dismissal or punishment. Ky. Rev. Stat. Ann. § 95.450(3).
- "Upon the hearing all charges shall be considered traversed and put in issue, and the trial shall be confined to matters related to the issues presented." Ky. Rev. Stat. Ann. § 95.450(4).
- "The legislative body shall fix the punishment of a member of the police or fire department found guilty, by a reprimand, suspension for any length of time not to exceed six (6) months, by reducing the grade if the accused is an officer, or by combining any two (2) or more of those punishments, or by dismissal from the service." Ky. Rev. Stat. Ann. § 95.450(7).

C. KRS § 95.765

KRS § 95.765 includes the following problematic provisions:

Limits Discipline:

- All charges against members of the police or fire departments shall be filed with the clerk of the legislative body, and within three (3) days after said filing the legislative body shall proceed to hear and examine said charges; provided two (2) days before said hearing the member of the police or fire departments, accused, has been served with a copy of said charges, and a statement of the day, place and hour at which and when the hearing of said charges shall begin. Ky. Rev. Stat. Ann. § 95.765(1).
- "No member of the police or fire departments shall be removed from the department or reduced in grade upon any reason except inefficiency, misconduct, insubordination or violation of law, or violation of the rules adopted for the departments." Ky. Rev. Stat. Ann. § 95.765(1).
- "Any person may prefer charges against a member of the police or fire departments, which must be filed in the office of the mayor, who shall thereupon communicate said charges without delay to the legislative body. Said charges must be written, signed by the person making such charges and must set out with clearness and distinctness each and every charge." Ky. Rev. Stat. Ann. § 95.765(1).
- The standard is "probable cause." Ky. Rev. Stat. Ann. § 95.765(1).
- "The charges thus filed shall be written and shall set out with distinctness and clearness the charges made, and upon the hearing of any charges, as hereinafter provided, all said charges

shall be considered traversed, and put in issue, and the trial shall be confined to matters related to the issue so presented." Ky. Rev. Stat. Ann. § 95.765(1).

- The said body shall fix punishment against a member of the police or fire departments found guilty of any charge under KRS § 95.761 to 95.784, by reprimand or suspension for any length of time in their judgment, not to exceed six (6) months, or by reducing the grade, if the accused be chief or other officer, or by combining any two (2) or more of said punishments, or by removal or dismissal from the service of any such member of the police or fire department. Ky. Rev. Stat. Ann. § 95.765(2).
- "No member of the police or fire department except as provided in KRS § 95.761 to 95.784 shall be reprimanded, removed, suspended, or dismissed from the department until written charges have been made, or preferred against him, and a trial had as herein provided." Ky. Rev. Stat. Ann. § 95.765(2).

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Please let us know if you need further information regarding Kentucky's Peace Officer Bill of Rights.

TO: NATIONAL URBAN LEAGUE

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Law Enforcement Officer Bill of Rights Summary: Louisiana

Originally passed in 1985, Louisiana's Rights of Law Enforcement Officers While Under Investigation statute, La. Rev. Stat. § 40:2531, *et seq*., has undergone 12 revisions, most recently in 2017:

- In 1991, H.B. 244 included campus police employed at state colleges and universities as officers protected under investigation.[1]
- In 1995, H.B. 896 and S.B. 1143 allowed all LEOs to have a derogatory comment expunged from their personnel files under certain conditions.[2]
- In 2001, H.B. 1847 specified an investigation must be conducted within 60 days unless an extension of up to 60 days is granted.[3]
- In 2005, H.B. 711 allowed for domestic abuse complaints in an officer's personnel file to be expunged under certain conditions.[4]
- In 2007, H.B. 350 provided an investigation was complete when an officer receives either a notice for a pre-disciplinary hearing or the complaint was not found to be substantial enough to discipline the officer and specified investigation of a complaint had to begin within 14 days of receiving the complaint.[5]
- In 2007, S.B. 144 permitted officers under investigation to not receive disciplinary action if the investigation was not conducted in accordance with the statute.[6]
- In 2008, H.B. 93 included police employees as individuals protected under investigation.[7]
- In 2008, the statute was revised to specify that the investigated officer may choose his or her attorney and/or representative to attend interrogations, and the officer shall have up to 30 days to secure representation, "during which time all questioning shall be suspended." The revision also permits the attorney or representative to offer advice to the LEO and make statements on the record regarding any questions asked.[8]
- In 2017, H.B. 276 specified the days in which an officer had to secure representation before being questioned. An officer has 14 days to find representation unless the officer is being hospitalized for an injury related to the incident or if the incident involved two or more officers, then the officer has 30 days to find representation.[9]

Louisiana's Rights of Law Enforcement Officers While Under Investigation has received media attention regarding the 1995, 2001, and 2007 amendments:

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[1] 1991 La. Sess. Law Serv. Act 450 (H.B. 244).
[2] 1995 La. Sess. Law Serv. Act 232 (H.B. 896); 1995 La. Sess. Law Serv. Act 915 (S.B. 1143).
[3] 2001 La. Sess. Law Serv. Act 933 (H.B. 1847).
[4] 2005 La. Sess. Law Serv. Act 452 (H.B. 711).
[5] 2007 La. Sess. Law Serv. Act 91 (H.B. 350).
[6] 2007 La. Sess. Law Serv. Act 258 (S.B. 144).
[7] 2008 La. Sess. Law Serv. Act 249 (H.B. 93).
[8] 2008 La. Sess. Law Serv. Act 654 (H.B. 1129).
[9] 2017 La. Sess. Law Serv. Act 101 (H.B. 276).

- Regarding the 1995 amendment to the statute, the community of Shreveport, Louisiana gathered together after the 2003 fatal shooting of Marquise Hudspeth by two police officers seeking justice and answers for the decedent. Even in 2006, there was little known about the incident and whether the officers were disciplined or not. The community does not believe that it is fair for "accident reports, jail booking logs and crime statistics" to be available to the public but the officers' personnel files and other information gathered during the investigation process were kept confidential.[10]
- Regarding the 2001 and 2007 amendments to the statute, frustration grew over the New Orleans Police Department (NOPD) acknowledging that internal affairs waits until a criminal case involving an officer is resolved before beginning the investigative process for administrative disciplinary actions, going beyond the 60 day allotted time the revision provides. In one instance, the NOPD waited over a year before their investigation into an officer was complete. Much public frustration grew over the 60 day time period because when a violation of any provision of the bill of rights is committed, the disciplinary action of that officer is nullified and the officer is reinstated to their original position if suspension, demotion, or termination occurred.[11]

The Louisiana statute includes the following problematic provisions:

Restrictions on Interrogation Procedures:

- The officer under investigation may take notes during interrogation sessions. § 2531(B)(1).
- Interrogations must be for "a reasonable period of time" with "reasonable period for the rest and personal necessities" of the investigated officer. § 2531(B)(2).
- Each interrogation session is recorded, and the investigated officer can obtain a copy of the recording or transcript upon written request. § 2531(B)(3).
- LEO may be represented by an attorney, a representative, or both. § 2531(B)(4)(a).
- LEO's representative is allowed to advise LEO on any questions during the investigation and make statements on the record about any question asked. § 2531(B)(4)(c).

Time Limits on Disciplining Officers:

- The Chief of Police or its authorized representative must initiate an investigation within 14 days of the date the complaint is made against an officer. The investigation must be completed within 60 days. An extension of up to 60 days may be granted if the police department shows good cause in needing an extension at a specially-set hearing. The police department and the investigated officer can also agree in writing for an additional 60-day extension. § 2531(B)(7)-(8).

Officers Have Unfair Access to Information:

- Officers are given information civilians do not have access to before being interrogated including notice of the nature of the investigation, identity and authority of the person conducting the investigation and all persons present during any interrogation. § 2531(B)(1).

[10] Joel Anderson, *Marquise Hudspeth Shooting Highlights Ongoing Dispute Over Police Record Requests*, The Times (Mar. 18, 2006).

[11] Ramon Antonio Vargas, NOPD Violates State Law by Delaying Probes, Court Finds; Officer Successfully Appeals Suspension, Times-Picayune (Jan. 20, 2013).

Possible Waiting Period Before an Officer is Interrogated:

- LEO has 30 days to secure representation before interrogation unless the incident is "an officer involved incident," in which case the LEO under investigation then has 14 days. If the incident involves more than one officer or an officer is confined to a medical facility due to an injury or illness, the LEO will have 30 days. § 2531(B)(4)(b)(i)-(ii).
    - An "officer-involved incident" is "any incident in which serious bodily injury or death of another individual is caused by any intentional or accidental use of a dangerous or deadly weapon by a police employee or law enforcement officer which results from the efforts of a police employee or law enforcement officer attempting to effectively arrest or otherwise gain control of another or while in police custody." § 2531(B)(4)(iii).

Limits Discipline:

- No disciplinary or adverse action shall be taken against the officer under investigation unless the investigation meets that standards set forth in § 2531. "Any discipline, demotion, dismissal, or adverse action of any sort whatsoever taken against a police employee or law enforcement officer without complete compliance with the foregoing minimum standards is an absolute nullity." § 2531(C).

Limits Oversight:

- No statements made during the investigation shall be admissible in a criminal proceeding. § 2531(B)(5).

Erases Misconduct Records:

- An adverse comment will not be included in an officer's file without the officer having read and signed the comment. If the LEO refuses to sign it, that fact is noted on the document containing the adverse comment and both officers sign or initial the notation. § 2533(A).
- An officer has 30 days to file a written response to an adverse comment in the officer's personnel file, which will be attached to the adverse comment. § 2533(B).
- LEOs can request to have any record of a formal complaint against the officer for any violation of a city ordinance or state criminal law that appears on a provided list involving domestic violence expunged from his or her personnel file as long as the complaint was anonymous and the charges are not substantiated within 12 months. § 2533(C)(1).
    - The specific charges that the LEO can have expunged from the officer's file are criminal battery and assault, criminal trespass, criminal damage to property, or disturbing the peace if the incident occurred at the home of the LEO or the victim or the violation was the result of an obvious domestic dispute. § 2533(C)(2)(a)-(b).

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Please let us know if you need further information regarding Louisiana's Rights of Law Enforcement Officers While Under Investigation statute.

TO: NATIONAL URBAN LEAGUE akerman

Law Enforcement Officer Bill of Rights Summary: Minnesota

The current version of Minnesota's Peace Officer Discipline Procedure Act, Minn. Stat. Ann. § 626.89, *et seq.*, became effective on August 1, 2012. Originally passed in 1991, the statute has undergone three revisions, in 2007,[1] 2008, and 2012.

The 2008 revision, S.F. 3362 sponsored by Sen. Leo Foley (D-Coon Rapids), allows an investigated officer to have both a union representative and attorney present during questioning, rather than one or the other.[2] S.F. 3362 passed both houses of the legislature without a single vote in opposition.[3]

The 2012 revision, S.F. 1981, added Subd. 17, which provides for limited civilian review of police officer discipline (see "Limits Oversight" below). S.B. 1981 was sponsored by Sens. Newman (R-Dist. 81), Ingebrigtsen (R-Dist. 8), Limmer (R-Dist. 34), Thompson (R-Dist. 58), and Harrington (D-Dist. 67). It passed the state Senate with a vote of 59-5, and the state House by 107-25.[4]

Recent media coverage of Minnesota's Peace Officer Discipline Procedure Act has focused on how the law's protections of police officers contributed to the death of George Floyd. Minneapolis police officer Derek Chauvin had faced 17 complaints regarding his conduct as an officer, with only one complaint ended in a reprimand, when he killed Mr. Floyd by kneeling on his neck for nearly 9 minutes. According to critics, such statutes "make it difficult to adequately discipline or remove officers accused of misconduct by creating a separate set of rights and rules not granted to any other public sector union members." The Minnesota legislature in 2021 passed a police reform bill restricting the use of chokeholds and neck restraints by police officers, but the compromise bill did not include proposed language that would have strengthened the power of civilian review boards to make findings of misconduct and recommendations of specific discipline.[5]

The Minnesota Peace Officer Discipline Procedure Act includes the following problematic provisions:

[1] The 2007 revision added definitions of "administrative hearing, "formal statement," and "officer." 2007 Minn. Sess. Law Serv. Ch. 13, p. 21 (H.F. 1200) (West).
[2] 2008 Minn. Sess. Law Serv. Ch. 205 (S.F. 3362) (West).
[3] MN S. B. Stat., 2008 S.F. 3362.
[4] Minnesota Senate Bill Status, 2012 Senate File 1981.
[5] John Dunbar, Andrew Wallender, *Cops' Legal Cover is in Question as States Agonize Over Reforms*, Bloomberg Law News (Jun. 21, 2021), https://news.bloomberglaw.com/social-justice/cops-legal-cover-is-in-question-as-states-agonize-over-reforms.

Restrictions on Interrogation Procedures:

- An investigated officer's formal statement "must be taken at a facility of the employing or investigating agency or at a place agreed to by the investigating individual and the investigated officer." Minn. Stat. Ann. § 626.89 at Subd. 4.
- Interrogation sessions must be reasonable in duration and the investigated officer must be given reasonable periods "for rest and personal necessities." Interrogations should take place during the officer's work shift, "[w]hen practicable." Otherwise, the officer must be paid his or her current compensation for the time spent being interrogated. Minn. Stat. Ann. § 626.89 at Subd. 7.
- Investigated officers may have a union representative, attorney, or both present during interrogations. Minn. Stat. Ann. § 626.89 at Subd. 9.
- "Before an officer's formal statement is taken, the officer shall be advised in writing or on the record that admissions made in the course of the formal statement may be used as evidence of misconduct or as a basis for discipline." Minn. Stat. Ann. § 626.89 at Subd. 10.

Officers Have Unfair Access to Information:

- An investigated officer's formal statement may not be taken unless a written complaint is filed with the employing or investigating agency signed by the complainant stating the complainant's knowledge, and the officer has been given a summary of the allegations. "Before an administrative hearing is begun, the officer must be given a copy of the signed complaint." Minn. Stat. Ann. § 626.89 at Subd. 5.
- "[A]n officer is entitled to a copy of the investigating agency's investigative report." Minn. Stat. Ann. § 626.89 at Subd. 6.
- An officer's formal statement must be recorded by electronic means or otherwise, and the officer may request a complete copy or transcript without charge or delay. The officer may tape record the session in which he or she gives a formal statement. Minn. Stat. Ann. § 626.89 at Subd. 8.

Limits Discipline:

- Statutes that grant officers a private cause of action against a police department can inhibit discipline: "[A] political subdivision or state agency that violates this section is liable to the officer for actual damages resulting from the violation, plus costs and reasonable attorney fees. The political subdivision or the state is deemed to have waived any immunity to a cause of action brought under this subdivision, except that the monetary limits on liability under section 3.736, subdivision 4, or 466.04 apply."

Limits Oversight:

- Civilian oversight is limited to solely an advisory capacity: "A civilian review board, commission, or other oversight body shall not have the authority to make a finding of fact or determination regarding a complaint against an officer or impose discipline on an officer. A civilian review board, commission, or other oversight body may make a recommendation regarding the merits of a complaint; however, the recommendation shall be advisory only and shall not be binding on nor limit the authority of the chief law enforcement officer of any unit of government." Minn. Stat. Ann. § 626.89 at Subd. 17.

Erases Misconduct Records:

- This provision may inhibit the placement of disciplinary documentation in an officer's file: "No disciplinary letter or reprimand may be included in an officer's personnel record unless the officer has been given a copy of the letter or reprimand." Minn. Stat. Ann. § 626.89 at Subd. 13.

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Please let us know if you need further information regarding Minnesota's Peace Officer Discipline Procedures Act.

TO: NATIONAL URBAN LEAGUE akerman

Law Enforcement Officer Bill of Rights Summary: Nevada

The current version of Nevada's Rights of Police Officers statute, Nev. Rev. Stat. Ann. tit. 23, Ch. 289, *et seq*., became effective on July 1, 2021. Originally passed in 1983, the statute has undergone several revisions, most recently in 2019, 2020, and 2021:

- The 2020 revision, S.B. 2, which passed in just five days during the Nevada legislature's 32nd Special Session, repealed some of the problematic provisions identified in public debate of S.B. 242 during the 2019 legislative session. Those problematic provisions included a one-year statute of limitations on investigations of a LEO's conduct, a prohibition on reassigning a peace officer during an investigation without the officer's consent, a prohibition on reopening an investigation of an officer unless new evidence is discovered, and permitting the investigated officer to review the evidence against him or her before making a statement.
- Senator Nicole J. Cannizzaro (D-6th Dist.), who sponsored S.B. 242's revision to the Peace Officer's Bill of Rights in 2019, also sponsored the 2020 revision that eliminated those problematic provisions. She indicated in a media interview that S.B. 242 had come under increased scrutiny since George Floyd's death and it would be addressed in the special legislative session. While advocates had labeled the law "an affront to Black, brown and other communities that have suffered abusive policing," Senator. Cannizzaro characterized the law as a labor issue, noting the intention was that all workers should be "treated fairly in the workplace."
- During public debate of S.B. 2, nearly everyone was opposed to its passage, but for two distinctively different reasons. Representatives from the ACLU, Mi Familia Vota, Forced Trajectory Project, Make the Road Nevada, Battle Born Progress, the Progressive Leadership Alliance of Nevada, and ACTIONN, as well as several individual constituents, indicated that S.B. 2 did not go far enough and should instead repeal S.B. 242 entirely. Several of these people also expressed concern because S.B. 2's language was not available sooner and was being rushed through the legislative process. Other representatives from the Las Vegas Police Protective Association, the Las Vegas Police Managers and Supervisors Association, and the Reno Police Protective Association opposed S.B. 2 in its entirely and sought to have S.B. 242's problematic provisions intact.

S.B. 2 passed the Nevada legislature despite opposition from all 13 Assembly Republicans. Four Democrats also voted against the bill because it did not go far enough toward repealing S.B. 242.

News coverage of S.B. 2 called it a "modest rewrite" of S.B. 242 that took out some—but not all—of its least popular provisions. The President of the Las Vegas Police Protective Association reacted: "I think it was disgusting that Sen. Cannizzaro failed to back law enforcement." The Peace Officer's Bill of has also been criticized in the media because it requires that suspended officers be paid pending the outcome of an investigation of their conduct.

The Nevada Act includes the following problematic provisions:

Restrictions on Interrogation Procedures:

- Limit the scope of the questions during the interrogation or hearing to the alleged misconduct of the peace officer who is the subject of the investigation. If any evidence is discovered during the course of an investigation or hearing which establishes or may establish any other possible misconduct engaged in by the peace officer, the law enforcement agency shall notify the peace officer of that fact and shall not conduct any further interrogation of the peace officer concerning the possible misconduct until a subsequent notice of that evidence and possible misconduct is provided to the peace officer pursuant to this chapter. N.R.S. § 289.060(c) (does not apply to criminal investigation) (N.R.S. § 289.090).
- "The law enforcement agency shall...[a]llow the peace officer who is the subject of the investigation or who is a witness in the investigation to explain an answer or refute a negative implication which results from questioning during an interview, interrogation or hearing." N.R.S. § 289.060(3)(d) (does not apply to criminal investigation) (N.R.S. § 289.090).
- "[A] peace officer who is the subject of an investigation... may upon request have two representatives of the peace officer's choosing present with the peace officer during any phase of an interrogation or hearing relating to the investigation, including, without limitation, a lawyer, a representative of a labor union or another peace officer. [The] representative of a peace officer must assist the peace officer during the interview, interrogation or hearing. The law enforcement agency conducting the interview, interrogation or hearing shall allow a representative of the peace officer to explain an answer provided by the peace officer or refute a negative implication which results from questioning of the peace officer but may require such explanation to be provided after the agency has concluded its initial questioning of the peace officer." N.R.S. § 289.080(1)-(4) (does not apply to criminal investigation) (N.R.S. § 289.090).

Time Limits on Disciplining Officers:

- Any investigation of a peace officer must be commenced by the law enforcement agency within a reasonable period of time after the date of the filing of the complaint or allegation with the law enforcement agency. A law enforcement agency shall not conduct an investigation pursuant to this subsection if the complaint or allegation is filed with the law enforcement agency more than 5 years after the activities of the peace officer occurred. N.R.S. § 289.057(1) (does not apply to criminal investigation) (N.R.S. § 289.090).

Possible Waiting Period Before an Officer is Interrogated:

- "Except as otherwise provided in this subsection, a law enforcement agency shall, not later than 48 hours before any interrogation or hearing is held relating to an investigation conducted, provide a written notice to the peace officer who is the subject of the investigation." N.R.S. § 289.060(1). The notice must describe the investigation's nature, summarize the officer's alleged misconduct, provide the names of the officers conducting the investigation and anyone else who will be present at an interrogation or hearing, and inform the officer of his or her right to have two representatives present during questioning or a hearing." N.R.S. § 289.060(2) (does not apply to criminal investigation) (N.R.S. § 289.090).

Limits Discipline:

- "If a peace officer refuses to submit to a polygraphic examination: (a) No law enforcement agency may take any disciplinary or retaliatory action against the peace officer; and (b) No investigator may make a notation of such a refusal in the investigator's report or in any other manner maintain evidence of such a refusal. Further, [e]vidence of any refusal by a peace officer to submit to a polygraphic examination is not admissible at any subsequent hearing, trial or other judicial or administrative proceeding." N.R.S. § 289.050.
- Except as otherwise provided in a collective bargaining agreement, a law enforcement agency shall not suspend a peace officer without pay during or pursuant to an investigation conducted pursuant to this section until all investigations relating to the matter have concluded. N.R.S. § 289.057(2) (does not apply to criminal investigation) (N.R.S. § 289.090).
- The law enforcement agency shall [i]nterview or interrogate the peace officer during the peace officer's regular working hours, if reasonably practicable, or revise the peace officer's work schedule to allow any time that is required for the interview or interrogation to be deemed a part of the peace officer's regular working hours. Any such time must be calculated based on the peace officer's regular wages for his or her regularly scheduled working hours. If the peace officer is not interviewed or interrogated during his or her regular working hours or if his or her work schedule is not revised pursuant to this paragraph and the law enforcement agency notifies the peace officer to appear at a time when he or she is off duty, the peace officer must be compensated for appearing at the interview or interrogation based on the wages and any other benefits the peace officer is entitled to receive for appearing at the time set forth in the notice. N.R.S. § 289.060(3)(a) (does not apply to criminal investigation) (N.R.S. § 289.090).
- After the conclusion of the investigation, if a law enforcement agency intends to recommend that punitive action be imposed against the peace officer who was the subject of the investigation, the law enforcement agency must notify the peace officer of such fact and give the peace officer or any representative of the peace officer a reasonable opportunity to inspect any evidence in the possession of the law enforcement agency and submit a response. The law enforcement agency must consider any such response before making a recommendation to impose punitive action against the peace officer. If the law enforcement agency recommends punitive action be imposed against the peace officer and the peace officer appeals the recommendation to impose punitive action, the peace officer or any representative of the peace officer may review and copy the entire file concerning the internal investigation, including, without limitation, any evidence, recordings, notes, transcripts of interviews and documents contained in the file. N.R.S. § 289.080(9) (does not apply to criminal investigation) (N.R.S. § 289.
- "If an arbitrator or court determines that evidence was obtained during an investigation of a peace officer concerning conduct that could result in punitive action in a manner which violates any provision of NRS 289.010 to 289.120, inclusive, and that such evidence may be prejudicial to the peace officer, such evidence is inadmissible and the arbitrator or court shall exclude such evidence during any administrative proceeding commenced or civil action filed against the peace officer. If the arbitrator or court further determines that such evidence was obtained by a law enforcement agency in bad faith, the arbitrator or court must dismiss the administrative proceeding or civil action with prejudice." N.R.S. § 289.085.
- If an officer undergoes a polygraph examination, the examination and interview must be recorded. Before the examiner's opinion regarding the officer's honesty can be used in a disciplinary proceeding, the officer has a right to have another polygraph examiner review all

of the materials. If the second opinion does not agree with the first, the officer can ask for a second polygraph examination. The results of the polygraph cannot form the sole basis for officer discipline. N.R.S. § 298.070(3)-(4) (does not apply to criminal investigation) (N.R.S. § 289.090).

Limits Oversight:

- When an officer provides a statement or answers a question regarding the investigation of another officer for misconduct after being told that failing to provide that statement or answer could result in punitive action against him or her, that statement or answer cannot be used against the officer who provided the statement or answer in any subsequent criminal proceeding. N.R.S. § 289.060(4).

Erases Misconduct Records:

- A law enforcement agency cannot place an unfavorable comment or document in an officer's administrative file unless the officer has read and initialed the comment or document and/or provides a written response within 30 days, which also must go into the file. N.R.S. § 289.040(1)-(2).
- If a peace officer is the subject of an investigation of a complaint or allegation of misconduct, the law enforcement agency may place into any administrative file relating to the peace officer only: (a) a copy of the disposition of the allegation of misconduct if the allegation is sustained**;** and (b) a copy of the notice of or statement of adjudication of any punitive or remedial action taken against the peace officer. N.R.S. § 289.040(3).
- "If, pursuant to a policy of a law enforcement agency or a labor agreement, the record of the investigation or the imposition of punitive action is subject to being removed from any administrative file relating to the peace officer maintained by the law enforcement agency, the law enforcement agency shall not, except as otherwise required by federal or state law, keep or make a record of the investigation or the imposition of punitive action after the record is required to be removed from the administrative file." N.R.S. § 289.057(3)(b) (does not apply to criminal investigation) (N.R.S. § 289.090).

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Please let us know if you need further information regarding Nevada's Peace Officer Bill of Rights.

TO: NATIONAL URBAN LEAGUE

akerman

Law Enforcement Officer Bill of Rights Summary: New Mexico

The New Mexico legislature unanimously passed the current version of New Mexico's "Peace Officer's Employer-Employee Relations Act," N.M. Stat. Ann. § 29-14-1, *et seq*., in 1991, and the statute has undergone no revisions.

New Mexico's Peace Officer's Employer-Employee Relations Act has recently received media attention in the form of an op-ed written by representatives from Americans for Prosperity-New Mexico and the ACLU of New Mexico calling for a reexamination of the state's "Police Bill of Rights that undermine[s] accountability."[1]

The New Mexico statute includes the following problematic provisions:

Restrictions on Interrogation Procedures:

- "[A]ny interrogation of an officer shall be conducted when the officer is on duty or during his normal waking hours, unless the urgency of the investigation requires otherwise…any interrogation of an officer shall be conducted at the employer's facility, unless the urgency of the investigation requires otherwise." N.M. Stat. Ann. § 29-14-4(A-B).
- "Prior to commencement of any interrogation session: (1) an officer shall be informed of the name and rank of the person in charge of the interrogation and all other persons who will be present during the interrogation; (2) an officer shall be informed of the nature of the investigation, and the names of all known complainants shall be disclosed to the officer unless the chief administrator of the officer's employer determines that the identification of the complainant shall not be disclosed because it is necessary for the protection of an informant or because disclosure would jeopardize or compromise the integrity or security of the investigation; and (3) a reasonable attempt shall be made to notify the officer's commanding officer of the pending interrogation." N.M. Stat. Ann. § 29-14-4(C).
- "[D]uring any interrogation session, the following requirements shall be adhered to: (1) each interrogation session shall not exceed two hours unless the parties mutually consent to continuation of the session; (2) there shall not be more than two interrogation sessions within a twenty-four hour period, unless the parties mutually consent to additional sessions, provided that there shall be at least a one-hour rest period between the sessions; (3) the combined duration of an officer's work shift and any interrogation session shall not exceed fourteen hours within a twenty-four hour period, unless the urgency of the investigation requires otherwise; (4) there shall not be more than two interrogators at any given time; (5) an officer shall be allowed to attend to physical necessities as they occur in the course of an interrogation session; and (6) an officer shall not be subjected to offensive language or illegal coercion by his interrogator in the course of an interrogation session." N.M. Stat. Ann. § 29-14-4(D).

[1] Stephen Despin and Barron Jones, *New Mexico Has Work to do on Police Reform*, Santa Fe New Mexican (Aug. 14, 2020), https://www.santafenewmexican.com/opinion/my_view/new-mexico-has-work-to-do-on-policing-reform/article_1c708b24-dd18-11ea-abae-17ac9d0de4d3.html.

Officers Have Unfair Access to Information:

- Upon request, investigated officer must receive a transcript or recording of his or her interrogation within 15 working days of completion of the investigation. N.M. Stat. Ann. § 29-14-4(E)-(F).

Erases Misconduct Records:

- "No document containing comments adverse to a peace officer shall be entered into his personnel file unless the officer has read and signed the document. When an officer refuses to sign a document containing comments adverse to him, the document may be entered into an officer's personnel file if: (1) the officer's refusal to sign is noted on the document by the chief administrator of the officer's employer; and (2) the notation regarding the officer's refusal to sign the document is witnessed by a third party." N.M. Stat. Ann. § 29-14-7 (A). "A peace officer may file a written response to any document containing adverse comments entered into his personnel file and the response shall be filed with the officer's employer within thirty days after the document was entered into the officer's personnel file. A peace officer's written response shall be attached to the document." *Id*. at (B).

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Please let us know if you need further information regarding New Mexico's Peace Officer's Employer-Employee Relations Act.

TO: NATIONAL URBAN LEAGUE

akerman

Law Enforcement Officer Bill of Rights Summary: Oregon

Oregon's Disciplinary Actions Against Public Safety Officers statute, Or. Rev. Stat. Ann. § 236.350, *et seq*., originally passed the Oregon legislature in 1979, and the statute was last revised in 2013 to amend the statute's definitions section.

Oregon's Disciplinary Actions Against Public Safety Officers statute has not specifically received recent media attention, but H.B. 2513 has received some news coverage. H.B. 2513, which Oregon's governor signed into law on June 16, 2021, amended Or. Rev. Stat. Ann. § 181A.440 to require that officers receive three hours of training during basic police officer certification in the anatomy and physiology of airway and circulatory systems. The amended statute also requires officers to administer aid immediately to a restrained individual who is experiencing respiratory or cardiac distress when it is "tactically feasible" to do so.[1]

The Oregon statute includes the following problematic provisions:

Restrictions on Interrogation Procedures:

- "Unless the seriousness of an investigation requires otherwise, the interview must be conducted when the public safety officer is on duty or during the officer's normal waking hours. If the interview is conducted when the public safety officer is off duty, the officer must be compensated appropriately." O. R. S. § 236.360(2)(a).
- "The public safety officer may have a representative of the officer's choosing present at the interview." O. R. S. § 236.360(2)(b).
- "No more than two interviewers at a time may question the public safety officer." O. R. S. § 236.360(2)(c).
- "The interview may not last an unreasonable amount of time, taking into consideration the gravity and complexity of the matter under investigation." O. R. S. § 236.360(2)(f).
- "The public safety officer being interviewed may not be threatened with punitive action or subjected to offensive language." O. R. S. § 236.360(h)(A).
- "During the interview, the public safety officer must be allowed to attend to physical needs." O. R. S. § 236.360(2)(g).
- Note: The safeguards presented in O. R. S. § 236.360(2) do not apply to an investigation of solely alleged criminal activities. O. R. S. § 236.360(3)(b).

Time Limits on Disciplining Officers:

- "[Except in certain circumstances], an employer shall complete its investigation into an allegation of misconduct by a public safety officer and provide notification…no later than six months from the date of the first interview. The employer may extend the investigation to a maximum of 12 months from the date of the first interview, provided that, before the extended period begins, the employer provides written notice explaining the reason for the extension to

[1] Eric Ferkenhoff and Ian Richardson, *States Vary on Policing Changes; Oregon Bill's Proponents Say They will Increase Accountability, Reform,* Statesman Journal (May 13, 2021).

the officer and the officer's chosen representative and union representative, if any." O. R. S. § 236.360(6). "[However,] time does not run for the period during which [a] civil action is pending…[or] for the period during which [a] criminal matter is pending." *Id*.

Officers Have Unfair Access to Information:

- "The public safety officer is not required to answer questions until the officer has been informed of the nature of the investigation and of facts reasonably sufficient to inform the officer of the circumstances surrounding the allegations under investigation. This paragraph does not apply to preliminary questions directed at gaining a general overview of events in order to assess whether an inquiry is necessary and to effectively investigate and gather evidence." O. R. S. § 236.360(2)(e).
- "The public safety officer may record the interview and must be given a copy of the tape or digital file of the interview and, upon request, a transcript of any recording that has been transcribed by the employer. The public safety officer must be given a copy of any written statement or report describing the officer's statements. Materials required to be given to the public safety officer under this paragraph must be given before subsequent interviews in the course of the same investigation." O. R. S. § 236.360(2)(i)(A)-(C).

Limits Discipline:

- Collective bargaining agreements can limit discipline, and Or. Rev. Stat. Ann. § 236.370 provides that the statute does not apply during "a probationary period under a collective bargaining agreement which is in excess of 12 months," to supervisory employees "where a collective bargaining agreement is in effect with their public employer," or to officers who are "represented in a collective bargaining unit if the collective bargaining agreement or the established policies of the law enforcement unit that employs the public safety officers provide for procedures and safeguards [like those provided in the statute]. "
- The statute limits the circumstances under which an investigation may be reopened: "An investigation may be reopened if: (a) Significant new evidence is discovered that is likely to affect the outcome of the investigation; and (b)(A) The evidence resulted from the public safety officer's predisciplinary response; or (B) The evidence could not have been discovered by the employer without resorting to extraordinary measures." O. R. S. § 236.360(7).

Limits Oversight:

- "In a disciplinary or administrative investigation, the public safety officer's chosen representative may not be required to disclose, or be subject to disciplinary action for refusing to disclose, statements made by the officer to the representative for purposes of the representation." O. R. S. § 236.360(2)(k).

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Please let us know if you need further information regarding Oregon's Disciplinary Actions Against Public Safety Officers statute.

TO: NATIONAL URBAN LEAGUE

akerman

Law Enforcement Officer Bill of Rights Summary: Rhode Island

Rhode Island's Law Enforcement Officers' Bill of Rights, 42 R.I. Gen. Laws Ann. §§ 28.6 *et seq.*, easily passed the state legislature in 1976. Originally passed in 1976, the state supreme court upheld its constitutionality in 1978, and the Fraternal Order of Police effectively lobbied against the repeal of the statute, which has since undergone four revisions:

- The 1980 revision:[1]
  - removed the requirement that the hearing committee members all had to come from within same law enforcement agency and permitted members who are active LEOs in Rhode Island other than a chief of police to serve on a hearing committee.
  - changed the place of an officer's interrogation from the office of command of the investigating officer to an office within the department previously designated for the purpose by chief of police.
  - added provision allowing city or town to petition the Rhode Island Supreme Court by writ of certiorari for an appeal of a hearing committee's decision. The standard established was that the hearing's decision was arbitrary or capricious or characterized by abuse of discretion or affected by error of law.
  - permitted suspension of officer without pay and benefits if LEO is indicted for a felony, but the officer continues to receive medical benefits and insurance.

- The 1982 Revision:[2]
  - Added a provision allowing the presiding justice to appoint a legal counsel to assist hearing committee, with agency and LEO each paying 50% of the legal fees of the hearing committee's appointed legal counsel, but upon motion by either party, presiding justice may change the assignment of costs.

- The 1995 Revision:[3]
  - Limited interrogation protections to only non-criminal matters.
  - Changed requirement that LEO be informed of nature of complaint, etc. to before any investigation, rather than before any interrogation.
  - Added the 3-year statute of limitations for administrative discipline.
  - Added provision for eligibility for third hearing committee member; presiding judge picks alternately from two lists, one from the Rhode Island Police Chief's Association and the second is a joint list from the Fraternal Order of Police and the International Brotherhood of Police Officers.
  - Added suspension of hearing process during adjudication of criminal charges.
  - Added hearing time constraints: hearing must commence 30 days after selection of chair, completed in 60 days, written decision 30 days later.

[1] Rhode Island - General Assembly, January Session and June Special Session: 1181-1186.
[2] Rhode Island - General Assembly, January Session and July Special Sessions: 1840-1842.
[3] 1995 Rhode Island Laws Ch. 95-19 (95-S310).

- Provided the law enforcement agency can suspend LEO if officer is under investigation for criminal felony matter, for no longer than 180 days, with full pay and benefits. Length if 30 days if misdemeanor, 15 days for noncriminal matter.
- Provided that if LEO is charged with a felony or convicted and incarcerated for a misdemeanor, agency can suspend LEO without pay and benefits, except the officer keeps insurance.
- If LEO is convicted of a felony, shall be suspended without pay and benefits but keeps insurance pending appeal.
- Added permission for law enforcement agency to release information pertaining to criminal charges filed against an LEO, including the officer's employment status and the administrative charges brought as a result of the criminal charges.
- Allowed law enforcement agency to impose emergency suspension on an officer facing criminal charges without a hearing.

- The 2001 Revision:[4]
  - Added airport employees who have the power to arrest to the list of officers entitled to the LEO Bill of Rights' protections.

Rhode Island's Law Enforcement Officers' Bill of Rights has received significant media attention since its passage 45 years ago, as more than 700 articles have been published regarding the statute. Highlights include:

- In 1995, an internal investigation against an officer who murdered three teens in 1993 was dismissed because the chief of police discussed the investigation in the media, leading to the 1995 revision to the statute permitting release of information regarding an officer facing criminal charges.[5] The state supreme court later held the hearing committee exceeded its authority under the LEO's Bill of Rights when it dismissed the departmental charges against the ultimately convicted officer, as the police chief must be able to reassure the public that appropriate steps are taken when an officer is charged with murder.[6]
- In 1997, a bill passed the state legislature that would have granted LEO's the right to hearing if they were suspended for less than two days, but the governor vetoed the bill.[7]
- In 1998, there was a failed effort to revise the LEO Bill of Rights to replace one member of the hearing committee with a hearing officer from the state Department of Administration who is trained in judicial affairs who would chair the proceedings. This push was at least partly influenced by a case in which department fired an officer for seeing a female friend while on

[4] 2001 Rhode Island Laws Ch. 01-77.
[5] Michael Corkery, *Legislation Targets "Wrongs" in Police Officers Bill of Rights*, Providence Journal-Bulletin (Feb. 15, 1998).
[6] Doane Hulick, *Charges against Sabetta reinstated; The Rhode Island Supreme Court has ordered departmental disciplinary charges reinstated against former Foster Patrolman Robert G. Sabetta Jr. now serving life in prison for murdering three teenagers*, Providence Journal (July 25, 1995).
[7] Drake Witham, *Allies sought in fighting officers' rights; Town Manager Michael Wood and members of the Town Council meet with police chiefs and town officials on a common effort to cut back the Law Enforcement Officers Bill of Rights*, Providence Journal-Bulletin (Jan. 23, 1998).

duty, only to have the hearing committee overrule the decision and impose a 30-day suspension without pay despite video evidence against the officer.[8]

- In 2005, several male officers had sexual relations with a female high school student who was working with the police department through a youth internship program. The chief wanted to fire the officers, but the hearing committee found the officers had committed "conduct unbecoming an officer" and fired one officer, allowed another to resign, and temporarily suspended the remaining three officers.[9]
- In 2001, there was a failed effort by the Rhode Island Select Commission on Race and Police-Community Relations to amend the LEO's Bill of Rights to put two civilians on the hearing committee. The police unions opposed the amendment, arguing only police officers understand the split-second decisions they are required to make, and most of the hearings pertain to mundane administrative matters like abuse of sick time.[10]
- In 2004, the LEO's Bill of Rights' statute of limitations appeared to shield officers involved in a scandal to cheat on promotions exams because the misconduct was not discovered within three years of its occurrence.[11]
- In 2020, Rhode Island senate leaders launched a task force to determine the extent to which the LEO's Bill of Rights blocks dismissal, discipline of "bad cops," with the mission "to comprehensively study and provide recommendations on the Law Enforcement Officers' Bill of Rights to ensure accountability and protection against misconduct."[12]
- Also in 2020, state Rep. Anastasia Williams (D-Providence) proposed changes to the statute that did not pass, including the expansion of the police department's ability to suspend an officer without a hearing from two (2) days to thirty (30) days and requiring that a hearing committee find that a department's punishment is "arbitrary or capricious" before it can change department-imposed discipline. The bill would have also changed the composition of the hearing committee to include recommendations from the Rhode Island League of Cities and Towns, Rhode Island Commission on Human Rights, and the presiding justice of the superior court.[13]
- In 2021, the LEO's Bill of Rights was cited as the reason a police department could not fire an officer convicted of assault for kicking and kneeling on a handcuffed man as he lay on the ground in April 2020. Because the officer appealed the conviction, the statute's prohibition on disciplinary action as long as a court case is ongoing applied.[14]

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[8] Michael Corkery, *Legislation Targets "Wrongs" in Police Officers Bill of Rights*, Providence Journal-Bulletin (Feb. 15, 1998).
[9] Zachary R. Minder, *Bill of Rights law played central role in dealing with police Explorers case*, Providence Journal (July 22, 2005).
[10] Jonathan D. Rockoff, *The Police Report-Board's "blue wall" said to hide misdeeds*, Providence Journal-Bulletin (June 7, 2001).
[11] Amanda Milkovits, *Providence argues accused officers should be punished*, Providence Journal (May 20, 2004).
[12] Katherine Gregg, *Police Chiefs, Union Lobbyist, Ministers, Senators Reviewing Law Enforcement Officers Bill of Rights*, Providence Journal (June 30, 2020).
[13] Patrick Anderson, *Overhaul of R.I. Police Bill of Rights Proposed*, Providence Journal (June 19, 2020).
[14] *Law prohibits firing of officer convicted of assault for now*, Westerly Sun (Mar. 25, 2021).

The Rhode Island statute includes the following problematic provisions:

Restrictions on Interrogation Procedures:

- "The interrogation shall be conducted at a reasonable hour, preferably [] when the [] officer is on duty." 42 R.I. Gen. Laws Ann. § 42-28.6-2(1).
- "The interrogation shall take place at an office within the department previously designated for that purpose by the chief of police." 42 R.I. Gen. Laws Ann. § 42-28.6-2(2).
- "All questions directed to the officer under interrogation shall be asked by and through one interrogator." 42 R.I. Gen. Laws Ann. § 42-28.6-2(3).
- "Interrogating sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary." 42 R.I. Gen. Laws Ann. § 42-28.6-2(6).
- "Any law enforcement officer under interrogation shall not be threatened with transfer, dismissal, or disciplinary action." 42 R.I. Gen. Laws Ann. § 42-28.6-2(7).
- "At the request of any law enforcement officer under interrogation, he or she shall have the right to be represented by counsel of his or her choice who shall be present at all times during the interrogation. The interrogation shall be suspended for a reasonable time until representation can be obtained." 42 R.I. Gen. Laws Ann. § 42-28.6-2(9).

Time Limits on Disciplining Officers:

- "Disciplinary action for violation(s) of departmental rules and/or regulations shall not be instituted against a law enforcement officer under this chapter more than three (3) years after such incident, except where such incident involves a potential criminal offense, in which case disciplinary action under this chapter may be instituted at any time within the statutory period of limitations for such offense." 42 R.I. Gen. Laws Ann. § 42-28.6-4 (b).
- "The [disciplinary action] hearing shall be convened at the call of the chair; shall commence within thirty (30) days after the selection of a chairperson of the hearing committee; and shall be completed within sixty (60) days of the commencement of the hearing. The hearing committee shall render a written decision within thirty (30) days after the conclusion of the hearing. The time limits established in this subsection may be extended by the presiding justice of the superior court for good cause shown." 42 R.I. Gen. Laws Ann. § 42-28.6-5(b).

Officers Have Unfair Access to Information:

- "The law enforcement officer under interrogation shall be informed of the name, rank, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation." 42 R.I. Gen. Laws Ann. § 42-28.6-2(3).
- "The law enforcement officer under investigation shall, prior to any interrogating, be informed in writing of the nature of the complaint and of the names of all complainants." 42 R.I. Gen. Laws Ann. § 42-28.6-2(5).
- "If any law enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, he or she shall be completely informed of all his or her rights prior to the commencement of the interrogation." 42 R.I. Gen. Laws Ann. § 42-28.6-2(8).

Limits Discipline:

- "No complaint against a law enforcement officer shall be brought before a hearing committee unless the complaint be duly sworn to before an official authorized to administer oaths." 42 R.I. Gen. Laws Ann. § 42-28.6-2(4).
- "If the investigation or interrogation of a law enforcement officer results in the recommendation of some action, such as demotion, transfer, dismissal, loss of pay, reassignment, or similar action which would be considered a punitive measure, then, before taking such action, the law enforcement agency shall give notice to the law enforcement officer that he or she is entitled to a hearing on the issues by a hearing committee. The law enforcement officer may be relieved of duty subject to § 42-28.6-13 of this chapter, and shall receive all ordinary pay and benefits as he or she would have if he or she were not charged." 42 R.I. Gen. Laws Ann. § 42-28.6-4(a).
- "Whenever a law enforcement officer faces disciplinary action as a result of criminal charges, [hearing procedures] shall be suspended pending the adjudication of said criminal charges." 42 R.I. Gen. Laws Ann. § 42-28.6-4 (i).
- "The hearing committee shall be empowered to sustain, modify in whole or in part, or reverse the complaint or charges of the investigating authority. 42 R.I. Gen. Laws Ann. § 42-28.6-11 (a). Appeals from all decisions rendered by the hearing committee shall be to the superior court []. For purposes of this section, the hearing committee shall be deemed an administrative agency and its final decision shall be deemed a final order in a contested case." 42 R.I. Gen. Laws Ann. § 42-28.6-12(a).
- "[I]t shall be the burden of the charging law enforcement agency to prove, by a fair preponderance of the evidence, that the law enforcement officer is guilty of the offense(s) or violation(s) of which he or she is accused." 42 R.I. Gen. Laws Ann. § 42-28.6-11(c).
- "Any law enforcement officer who is [charged, indicted or informed against for] [or] convicted of a felony shall, pending the prosecution of an appeal, be suspended without pay and benefits; provided, however, that the officer's entitlement to such medical insurance, dental insurance, disability insurance and life insurance as is available to all other officers within the agency shall not be suspended." 42 R.I. Gen. Laws Ann. § 42-28.6-13 (g)-(h).

Limits Oversight:

- "**No public statement shall be made prior to a decision being rendered by the hearing committee** and no public statement shall be made if the officer is found innocent unless the officer requests a public statement; provided, however, that this subdivision shall not apply if the officer makes a public statement. The foregoing shall not preclude a law enforcement agency, in a criminal matter, from releasing information pertaining to criminal charges which have been filed against a law enforcement officer, the officer's status of employment and the identity of any administrative charges brought against said officer as a result of said criminal charges." 42 R.I. Gen. Laws Ann. § 42-28.6-2(12) (emphasis added).
- "No law enforcement officer shall be compelled to speak or testify before, or be questioned by, any non-governmental agency." 42 R.I. Gen. Laws Ann. § 42-28.6-2 (13).
- "**The law enforcement officer shall provide the charging law enforcement agency with the name of one active or retired law enforcement officer to serve on the hearing committee,** within five (5) days of the filing of his or her request for a hearing. Failure by the law enforcement officer to file his or her filing committee selection within the time period shall constitute a waiver of his or her right to a hearing under this chapter; provided, however, that

the presiding justice of the superior court, upon petition and for good cause shown, may permit the filing of an untimely hearing committee selection by the officer. The charging law enforcement agency may impose the recommended penalty during the pendency of any such petition." 42 R.I. Gen. Laws Ann. § 42-28.6-4(d).

- The law enforcement agency also selects a hearing committee member who is an active or retired law enforcement officer. 42 R.I. Gen. Laws Ann. § 42-28.6-4(e); all hearing committee members are from law enforcement.
- The two hearing committee members selected by the officer and the law enforcement agency then select a third committee member to chair the hearing committee; if they cannot agree on a third member, the presiding judge of the superior court will select the third member from two lists, one provided by the Rhode Island Police Chief's Association and another provided jointly by the Fraternal Order of Police and the International Brotherhood of Police Officers. 42 R.I. Gen. Laws Ann. § 42-28.6-4(f). The judge is to alternate between lists when making such selections. 42 R.I. Gen. Laws Ann. § 42-28.6-4(h). So, the hearing panel is composed of two police officers and a union representative.

Erases or Limits Misconduct Records:

- "No law enforcement agency shall insert any adverse material into any file of the officer unless the officer has an opportunity to review and receive a copy of the material in writing, unless the officer waives these rights in writing." 42 R.I. Gen. Laws Ann. § 42-28.6-2(11).

* * * * *

Please let us know if you need further information regarding Rhode Island's Law Enforcement Officers' Bill of Rights.

TO: NATIONAL URBAN LEAGUE akerman

Law Enforcement Officer Bill of Rights Summary: Tennessee

Tennessee's Investigations of Police Officers statute, Tenn. Code Ann. §§ 38-8-301 *et seq.*, was originally passed on May 17, 1989 and became effective on January 1, 1990.[1] The statute has undergone four substantive revisions, three of which passed in the last four years:

- In 1991, S.B. 860 added that LEOs cannot engage in political activity while on duty but cannot be prohibited from doing so when off duty acting as a private citizen.[2]
- In 2017, S.B. 1039 revised the statute to provide for the public availability of TBI investigative files regarding officer-involved shootings after the investigation and any criminal prosecution are complete. The revision passed unanimously in the state House of Representatives and Senate.[3]
- In 2019, the Tennessee General Assembly passed H.B. 658, which established parameters for community oversight boards, which are board or committees "established by a local government to investigate or oversee investigation into possible law enforcement officer misconduct or the operations of an agency employing a law enforcement officer."[4] State law had previously not regulated these locally-established community oversight boards. Reps. Michael Curcio and William Lamberth and Sen. Mike Bell supported the bill. HB 658 passed the House by a vote of 80-16[5] and the Senate by 24-6.[6] These boards are discussed further in media coverage of the 2019 amendment and under "Limits Oversight," below.
- In 2021, the Tennessee legislature imposed additional restrictions on community review boards. Effective July 1, 2021, H.B. 374 requires that members of those boards complete citizen police academies to maintain voting membership on the boards and renders a board without a majority of voting members ineffectual.[7] The exact language of the 2021 revision is discussed further in "Limits Oversight," below.
    - This amendment passed the Tennessee House of Representatives by a vote of 72-21, and the Senate passed an amended version of it by a vote of 26-6.[8] The state House then passed the Senate's amendment by a vote of 68-22.[9] The Senate's amendment

[1] Tennessee - 96th General Assembly, Public Acts, 1st Regular Session: 677-679.
[2] 1991 Tennessee Laws Public Ch. 193 (S.B. 860).
[3] 2017 Tenn. Laws Pub. Ch. 277 (S.B. 1039); https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB1039&GA=110.
[4] 2019 Tenn. Laws Pub. Ch. 320 (H.B. 658); Tenn. Code Ann. § 38-8-312(g)(1).
[5] The 16 "No" votes were Reps. Beck, Camper, Chism, Clemmons, Cooper, Dixie, Hardaway, Johnson, Lamar, Love, Miller, Mitchell, Parkinson, Potts, Stewart, and Towns; https://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB0658&ga=111.
[6] The 6 "No" votes were Sens. Akbari, Hensley, Kyle, Robinson, Watson, Yarbro; https://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB0658&ga=111.
[7] 2021 Tenn. Laws Pub. Ch. 523 (H.B. 374).
[8] The 6 "No" votes were Sens. Akbari, Campbell, Gilmore, Kyle, Robinson, Yarbro; https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0374.

[9] The 22 "No" votes were Reps. Beck, Camper, Clemmons, Dixie, Freeman, Hakeem, Hardaway, Harris, Hodges, Jernigan, Johnson, Lamar, Love, McKenzie, Miller, Mitchell, Parkinson, Powell, Shaw, Stewart, Thompson, Towns; https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0374.

that ultimately passed into law gave board members 12 months instead of 6 to complete the citizen police academy training, permitted a committee to take actions as long as a majority of its members completes the training (as opposed to losing all authority if any member did not complete the training), and required boards in jurisdictions without a citizen police academy to complete a similar program (as opposed to the amendment not applying at all to those jurisdictions). The amendment to § 38-8-312 became effective July 1, 2021.

Tennessee's Investigation of Police Officers statute has received media attention regarding its original passage and the 2017 and 2019 amendments:

- Regarding the 2017 amendment to the statute, some supporters of the provision valued the increased transparency and the public interest in the investigative record of officer-involved shootings, while others supported the bill because it provided an opportunity to publicly exonerate LEO's falsely accused of wrongdoing to promote confidence in law enforcement.[10]
- Regarding the 2019 amendment to the statute, community activists were upset that the legislature took direct subpoena power away from citizen review boards and required the boards to use a legislative body, such as the local city council, to issue specific subpoenas.[11] Critics accused legislators of passing the law in direct response to voters in Nashville approving the creation of such a board there. The amendment stripped existing community oversight boards in Knoxville and Nashville of their direct subpoena power.[12] The amendment also prohibited membership on the boards to be based on demographics, and the Nashville board was required to be representative of the community.

The Tennessee statute includes the following problematic provisions:

<u>Restrictions on Interrogation Procedures</u>:

- Questioning of the officer must take place at a reasonable time and place as designated by the investigating officer, preferably when the officer is on duty, "unless the circumstances dictate otherwise." Tenn. Code Ann. § 38-8-302(1).

<u>Time Limits on Disciplining Officers</u>:

- If the officer requests a hearing within a reasonable amount of time after disciplinary action has been taken, the municipality or county must set a hearing no later than fourteen calendar days following the date of request, unless a later date is agreed to by the officer. Tenn. Code Ann. § 38-8-305(a).

<u>Officers Have Unfair Access to Information</u>:

[10] *People are Talking*, Chattanooga Courier (May 4, 2017).
[11] Natalie Allison, *Bill limiting civilian police oversight boards passes both chambers; Legislation states that local legislative bodies would approve subpoena request by majority vote*, The Tennessean (Apr. 21, 2019).
[12] Natalie Allison, *Board could lose subpoena powers; Move would hinder ability to investigate alleged misconduct*, The Tennessean (Feb. 6, 2019).

- "Prior to being questioned, the officer must be informed of the name and rank of the investigating officer and any other individual present during the questioning and the nature of the investigation." Tenn. Code Ann. § 38-8-302(2).
- Before any disciplinary action may be taken, the officer must be notified in writing of all charges, the basis for the charges, and the action that may be taken. Tenn. Code Ann. § 38-8-304(1).

Limits Discipline:

- Before any disciplinary action may be taken, the officer must be given an opportunity, within a reasonable time limit that is at least five days or longer, after the date of the written notice containing the charges, to respond orally and in writing to the charges. Tenn. Code Ann. § 38-8-304(2). The officer may be assisted by counsel at the officer's own expense. Tenn. Code Ann. § 38-8-302(3).

Limits Oversight:

- Although not completely transparent, the statute does allow for information regarding the investigation of an officer-involved shooting death to be made public upon completion of the criminal prosecution or sooner by the district attorney: "After completion of an investigation into an officer-involved shooting death by the Tennessee bureau of investigation and after the completion of the prosecutorial function by the district attorney general, notwithstanding [the confidential records statute] to the contrary, the investigative record of the incident shall become a public record pursuant to title 10, chapter 7. Notwithstanding [the confidential records statute],the district attorney general may disclose all or part of the investigative record to the public prior to the record becoming a public record as provided in this section." Tenn. Code Ann. § 38-8-302(3).

- The statute limits the authority, powers, and compositions of community review boards:
    - A "community service board" is a board or committee that a local government establishes "to investigate or oversee investigation into possible law enforcement officer misconduct or the operations of an agency employing a law enforcement officer." Tenn. Code Ann. § 38-8-312(g)(1).
    - "The authority of a community oversight board shall be limited to the review and consideration of matters reported to the board and the issuance of advisory reports and recommendations to the duly elected or appointed officials of the agencies involved in public safety and the administration of justice within the jurisdiction for which the community oversight board is established." Tenn. Code Ann. § 38-8-312(a).
    - A community oversight board does not have direct subpoena power, but a local legislative body, such as a city council, can issue a subpoena for a specific witness or nonconfidential document on behalf of the community oversight board upon the legislative body's majority vote. Tenn. Code Ann. § 38-8-312(b)(1)-(3).
    - This provision eliminated Nashville's requirement that its COB include members from economically distressed areas: "A community oversight board shall not restrict or otherwise limit membership based upon demographics, economic status, or employment history." Tenn. Code Ann. § 38-8-312(d).

- This provision made it difficult or impossible for undocumented or formerly incarcerated people to be members or employees of COBs: "Any employee or member of a community oversight board must be a registered voter, as defined by [the state Elections statute], of the jurisdiction for which the community oversight board is established." Tenn. Code. Ann. § 38-8-312(c).

- As discussed above, the 2021 Amendment to Section 38-8-312 requires that members of those boards complete citizen police academies to maintain voting membership on the boards, and renders a board without a majority of voting members ineffectual:
  - (h)(1) In any jurisdiction in which the local law enforcement agency conducts a citizen police academy or similar program:
    - (A) Each member serving on a community oversight board as of July 1, 2021, shall complete the local law enforcement agency's citizen police academy or similar program by June 30, 2022; and
    - (B) Members appointed to serve on a community oversight board after July 1, 2021, shall complete the local law enforcement agency's citizen police academy or similar program within twelve (12) months of beginning service on the board.
  - (2) If a local law enforcement agency does not offer a citizen police academy or similar program that can be completed within the twelve (12) month timeframe required by subdivision (h)(1), then the member shall complete the agency's next available citizen police academy or similar program.
  - (3) A member who fails to comply with the requirement of this subsection (h) serves as a non-voting member until the member completes the academy or program. If the majority of the members of the community oversight board are non-voting members, then the board shall not take any official action until a majority of the members have completed the academy or program necessary to restore the members' voting statuses.

* * * * *

Notably, the statute does not deprive the police department from immediately suspending an officer under certain circumstances. The department is still permitted to immediately suspend an officer without pay if the officer's "continued presence on the job is deemed to be a substantial and immediate threat to the welfare of the officer's agency or the public" or if the officer refuses to obey a direct order that conforms with the agency's written rules and regulations. In that scenario, the officer's hearing rights will be provided "within a reasonable amount of time set by an agency." Tenn. Code Ann. § 38-8-306.

Please let us know if you need further information regarding Tennessee's Investigations of Police Officers statute.

TO: NATIONAL URBAN LEAGUE

akerman

Law Enforcement Officer Bill of Rights Summary: Virginia

Virginia's Law-Enforcement Officers Procedural Guarantee Act, Va. Code Ann. §§ 9.1-500, *et seq*., originally passed in 2001 and has undergone four revisions, most recently in 2020 :

- In 2001, the Governor Recommendation, which preserved the independence of the executive branch, was adopted unanimously in the senate.[1]
- In 2019, H.B. 2118 revised the statute to address the type of lab that could test officers' blood and urine samples.[2]
- In the years 2007, 2015, 2019, and 2020, inconsequential changes were made to the statute[3] such as changing the term "game warden" to "conservation police officer.[4]
- There was no substantive discussion noted in the minutes for the house or the senate in 2007, 2015, 2019, or 2020.[5]

Virginia's Law-Enforcement Officers Procedural Guarantee Act has received media attention most notably during the 5th District congressional election in 2020.

Two 5th District congressional hopefuls, Republican Bob Good and Democrat Dr. Cameron Webb made appeals to prospective voters at the Senior Statesman of Virginia Forum in 2020.[6] On a stage in front of nearly 1,000 individuals, Good voiced his support for police officers and strongly opposed efforts to defund the police.[7] Good went on further to advocate for a law enforcement bill of rights that would increase protections for police officers and mandate the death penalty for anyone who killed a police officer.[8] A month later, Good shared his plan to provide more federal funding to law enforcement and to counter any efforts taken to weaken the qualified immunity shield used to protect officers from lawsuits.[9]

The Virginia statute includes the following problematic provisions:

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[1] 2001 Va. Legis. Serv. Ch. 844 (S.B. 1098) (West).
[2] 2019 Va. Legis. Serv. Ch. 474 (H.B. 2118) (West).
[3] 2007 Va. Legis. Serv. Ch. 87 (H.B. 1867) (West); 2015 Va. Legis. Serv. Ch. 730 (H.B. 1776) (West); 2015 Va. Legis. Serv. Ch. 38 (S.B. 1032) (West); 2019 Va. Legis. Serv. Ch. 474 (H.B. 2118) (West); 2019 Va. Legis. Serv. Ch. 489 (H.B. 2656) (West); 2020 Va. Legis. Serv. Ch. 958 (S.B. 616) (West).
[4] 2007 Va. Legis. Serv. Ch. 87 (H.B. 1867) (West).
[5] 2007 Va. Legis. Serv. Ch. 87 (H.B. 1867) (West); 2007 Va. Legis. Serv. Ch. 364 (S.B. 896) (West); 2015 Va. Legis. Serv. Ch. 730 (H.B. 1776) (West); 2015 Va. Legis. Serv. Ch. 38 (S.B. 1032) (West); 2019 Va. Legis. Serv. Ch. 474 (H.B. 2118) (West); 2019 Va. Legis. Serv. Ch. 489 (H.B. 2656) (West); 2020 Va. Legis. Serv. Ch. 958 (S.B. 616) (West).
[6] Tyler Hammel, *At Senior Statesmen forum Good and Webb highlight policy differences*, Nelson County Times (Sept. 10, 2020).
[7] *Id.*
[8] *Id.*
[9] Amy Friedenberger, *Bob Good says Cameron Webb, son of a former DEA official, is anti-police. Will it stick in 5th District race? Laws*, Nelson County Times (Oct. 3, 2020).

Restrictions on Interrogation Procedures:

- Questioning of the officer must take place at a reasonable time and place as designated by the investigating officer, preferably when the officer is on duty, unless the matter requires immediate action. Va. Code Ann. § 9.1-501(1).
- The officer then must be given an opportunity, within a reasonable time that is at least five days or longer after the date of the written notice, to respond orally and in writing to the charges. Va. Code Ann. § 9.1-502(2).

Time Limits on Disciplining Officers:

- If the officer requests a hearing within a reasonable amount of time after disciplinary action has been taken, the employer must set a hearing no later than fourteen calendar days following the date of request, unless a later date is agreed to by the officer. Va. Code Ann. § 9.1-504(A).

Officers Have Unfair Access to Information:

- Prior to being questioned, the officer must be informed of the name and rank of the investigating officer and any other person present during the questioning and the nature of the investigation. Va. Code Ann. § 9.1-501(2).
- Before being disciplined, the officer must be notified in writing of all charges, the basis of such charges, and the action that may be taken. Va. Code Ann. § 9.1-502(1).

Limits Discipline:

- The LEO can choose what procedure applies to his or her investigation: The officer must be given written notification of his right to initiate a grievance under the grievance procedure established by the local governing body, and a copy of the grievance procedure must be provided to the officer upon request. The LEO can then decide to proceed under the grievance procedure or the statute's procedural guarantees, but not both. Va. Code Ann. § 9.1-502(4).
- The hearing panel consists of three members, all from the same law enforcement agency as the officer. Va. Code Ann. § 9.1-504(B).
- The recommendations of the hearing panel are advisory only but "shall be accorded significant weight." Va. Code Ann. § 9.1-504(D).
- Law enforcement agency can provide the LEO a hearing before taking disciplinary action if it chooses. Va. Code Ann. § 9.1-504(C).

Limits Oversight:

- The Virginia code also provides minimum standards for civilian protection in cases of police misconduct, and those standards are, indeed, minimal. Va. Code Ann. § 9.1-600 provides that law enforcement agencies must provide a process for civilians to submit written complaints, the agencies must assist citizens in filing such complaints, and they must maintain adequate records of the nature and disposition of those complaints.

* * * * *

Notably, the statute does not prevent the police department from immediately suspending an officer under certain circumstances. The department is still permitted to immediately suspend an officer without pay if the officer's "continued presence on the job is deemed to be a substantial

and immediate threat to the welfare of [the officer's] agency or the public" or if the officer refuses to obey a direct order that conforms with the agency's written rules and regulations. In that scenario, the officer's hearing rights will be provided "within a reasonable amount of time set by an agency." Va. Code Ann. § 9.1-505.

Please let us know if you need further information regarding Virginia's Law-Enforcement Officers Procedural Guarantee Act.

*Statute's definition of LEO does not include sheriff's department or any city or county. Va. Code Ann. § 9.1-500.

TO: NATIONAL URBAN LEAGUE

akerman

Law Enforcement Officer Bill of Rights Summary: West Virginia

West Virginia's Municipal Police Officers and Firemen-Procedure for Investigation Statute, W. Va. Code Ann. § 8-14A-1, *et seq*., passed the state legislature in 1982,[1] and the statute underwent one revision in 1997. That revision amended the statute to redefine "accused officer," to provide for the hearing board's composition in both civil service and noncivil service jurisdictions, and to grant appeal rights for both officers and police chiefs.[2]

West Virginia's Municipal Police Officers and Firemen-Procedure for Investigation Statute received media attention when Charleston's assistant mayor cited the statute's "probable cause" standard for initiating investigations against officers as an impediment to the investigation of an officer who was convicted of "double billing," as he was paid by a bank, shopping mall, and the city police department for the same hours worked.[3] The Fraternal Order of Police's influence in passing the statute has been acknowledged in the media.[4] Also, in 2018, the statute was cited as part of the benefits package for working for a city police force.[5]

The West Virginia statute includes the following problematic provisions:

Restrictions on Interrogation Procedures:

- No officer under investigation can be subjected to offensive language or threated with disciplinary action. W. Va. Code Ann. § 8-14A-2(3).
- Questioning of the officer must take place at a reasonable time, preferably when the officer is on duty, unless the matter requires immediate action. W. Va. Code Ann. § 8-14A-2(1).
- If the interrogation occurs during off-duty time at any place other than the officer's residence, the officer must be compensated for such off-duty time in accordance with regular department procedure. W. Va. Code Ann. § 8-14A-2(1).
- No officer can be questioned by more than three interrogators at one time. W. Va. Code Ann. § 8-14A-2(2).

Officers Have Unfair Access to Information:

- Prior to being questioned, the officer must be informed of the name, rank, command of the investigating officers and any other person present during the questioning and the nature of the investigation. W. Va. Code Ann. § 8-14A-2(2).
- The complete interrogation must be recorded, either written, taped, or transcribed, and the officer must receive a copy 10 days prior to any hearing if the officer requests the copy and pays a reasonable cost. W. Va. Code Ann. § 8-14A-2(4).

[1] West Virginia - 65th Legislature, 2nd Regular Session, 1st Extraordinary Session: 806-811 (S.B. 1, 1982).
[2] 1997 West Virginia Laws Ch. 151 (H.B. 2796).
[3] Rod Blackstone, *Nowling case; Double-billing is illegal for all*, Charleston Gazette, p. 2 (Jun. 29, 2007) (editorial).
[4] George Gannon, *Lodge fosters collaboration Cross-section of police groups come together*, Charleston Gazette, p. 2 (Feb. 29, 2004).
[5] Roger Adkins, *Ravenswood Police Hiring New Officer*, Jackson Herald (Oct. 30, 2018).

Limits Discipline:

- Prior to taking any disciplinary action against the officer, the police department must give notice to the officer that the officer is entitled to a hearing on the issues by a hearing board or the applicable civil service commission at least ten days before the hearing. W. Va. Code Ann. § 8-14A-3(a).
- When a civil service accused officer faces recommended punitive action, but before such action is taken, a hearing board must be appointed and provide a hearing that meets the requirements of W. Va. Code Ann. § 8-14-20. W. Va. Code Ann. § 8-14A-3(b).
    - Notably, punitive action may be taken before the hearing "if exigent circumstances. . . require it." W. Va. Code Ann. § 8-14A-3(b).
- Membership on the hearing board is restricted to police officers within the accused officer's department (or another law enforcement agency with the chief's approval). W. Va. Code Ann. § 8-14A-1(4)(a)(2).
    - In civil service departments (subject to civil service provisions of article 14, chapter 8 of this code or article fifteen, chapter eight of this code): the chief selects one member, the accused officer's department picks the second, and if those hearing panel members cannot pick the third, they give a list of four qualified candidates from which the civil service commission shall appoint a third member. W. Va. Code Ann. § 8-14A-1(2), (4)(a).
    - For noncivil service police departments: the hearing panel is a standing board of three members appointed by the police chief, the local fraternal order of police, and the local chamber of commerce. W. Va. Code Ann. § 8-14A-1(4)(b).

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Notably, the West Virginia statute does not prohibit a police department from immediately and temporarily suspending an officer pending in investigation if he or she reports for duty under the influence of alcohol. W. Va. Code Ann. § 8-14A-2.

Please let us know if you need further information regarding West Virginia's Municipal Police Officers and Firemen-Procedure for Investigation Statute.

TO: NATIONAL URBAN LEAGUE akerman

Law Enforcement Officer Bill of Rights Summary: Wisconsin

Wisconsin's Law Enforcement Officers' Bill of Rights, Wis. Stat. Ann. §§ 164.01, *et seq.*, originally became law in 1980 and has the following noteworthy legislative history:

- In 1980, the Wisconsin legislature passed Senate Bill 128, the "Law Enforcement Officer's Bill of Rights." The bill was sponsored mostly by Democrats, who controlled the state legislature at the time, but the votes were bipartisan, as it passed the Assembly by 61 to 25 and the Assembly by 26 to 7. Legislators later noted that S.B. 128 was "a hard bill to vote against." Many legislators supported the bill specifically because Milwaukee's Police Chief Harold Breier was "arbitrary and capricious" in his personnel decisions.[1]
- The 1993 revision, Senate Bill 66, raised the standard for disciplining officers from "for cause" to "just cause," identifying seven standards discussed under "Limits Discipline," below. SB 66 also expanded the Bill of Rights' provisions to all officers in the state, eliminating the restriction that it only applied to a city or county with a population of 500,000 or more, which effectively applied only to Milwaukee. 1993 Wisc. Act. 53, 1993 Senate Bill 66.[2]
- An attempted 2001 revision would have limited internal affairs interviews of police officers to 7:00 a.m. to 5:00 p.m. on regular workdays, but that bill failed.[3]

Wisconsin's Law Enforcement Officers' Bill of Rights received media attention regarding its 1993 revision:

- The 1993 revision, Senate Bill 66, originally contained a provision that would have allowed investigated officers to choose to go to closed arbitration to appeal a Police and Fire Commission ("PFC") decision rather than do so in open court proceedings, which would have rendered the state's PFC process ineffective. That provision was ultimately dropped from the 1993 revision, but Senate Bill 66 contained the seven "just cause" standards that police discipline must meet, replacing the simple "for cause" standard in the statute. An earlier version of the bill would have allowed serious matters to undergo the collective bargaining process, so arbitrators would have replaced PFCs entirely. Critics of the 1993 bill emphasized that police officers have the right to carry weapons and use deadly force, so they are fundamentally different from other public employees and should be treated differently when they are accused of misconduct. Supporters of the bill said officers in rural areas need protection from vindictive police chiefs.[4]

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[1] John Diedrich, *Fired officers collect millions; Only Milwaukee police earn salaries during long appeals*, Milwaukee Journal Sentinel (Apr. 24, 2005); John Diedrich, *Fired-officer pay put at $500,000 this year; City, union make cases on bill to end practice*, Milwaukee Journal Sentinel (Sept. 8, 2005).

[2] 1993 Wisc. Act. 53, 1993 Senate Bill 66.

[3] John Diedrich, *Police union still has clout; Milwaukee officers continue to enjoy perks others don't*, Milwaukee Journal Sentinel (Jan. 9, 2006).

[4] Jeff Richgels, *A Bill of Rights for Police? Proposed Law Stirs*, Capital Times (Madison, Wis.) (July 6, 1993); *Thompson would go slow on universal coverage*, Wisconsin State Journal (Nov. 11, 1993).

Wisconsin's LEO Bill of Rights has also been repeatedly criticized in the media because it requires that officers get paid until their appeal has concluded:

- For example, Madison police officer Herb Williams was fired 18 months after his own colleagues arrested him on drug charges, and he collected his salary and benefits for that entire time.[5]
- While supporters of paying suspended officers argue that officers' livelihoods need to be protected during the time they are unjustly accused of misconduct, it cost the City of Milwaukee $2.1 million from 1994-2005 to pay the salary and benefits of 32 fired officers who were not reinstated.[6]
- *See* Wis. Stat. Ann. § 62.13(5)(h), discussed below in "Limits Discipline."

The Wisconsin statute includes the following problematic provisions:

Restrictions on Interrogation Procedures:

- The officer may request a representative of the officer's choice to be present during the questioning. Wis. Stat. Ann. § 164.02(1)(b).

Time Limits on Disciplining Officers:

- The board must set the hearing not less than ten days nor more than thirty days following service of the charges. Wis. Stat. Ann. § 62.13(5)(d).
- Findings and determinations and orders of disciplinary action taken must be in writing, and if they follow a hearing, must be filed within three days of the action with the secretary of the board. Wis. Stat. Ann. § 62.13(5)(f).
- If the officer appeals the order of the board within ten days after the order is filed, the board must certify to the clerk of the circuit court the record of the proceedings, including all documents, testimony, and minutes, within five days after receiving written notice of the appeal. Wis. Stat. Ann. § 62.13(5)(f).
- The action "shall have precedence over any other cause of a different nature pending in the court," and the court must set the matter for trial within 15 days after receiving the application requesting trial. Wis. Stat. Ann. § 62.13(5)(i).

Officers Have Unfair Access to Information:

- An officer under investigation that could lead to disciplinary action must be informed of the nature of the investigation prior to any interrogation. Wis. Stat. Ann. § 164.02(1)(a).

Limits Discipline:

- Evidence obtained during any questioning not performed in accordance with the statute cannot be used in a subsequent disciplinary proceeding against the officer. Wis. Stat. Ann. § 164.02(2).
- An officer cannot be disciplined unless the board determines there is "just cause," which is determined based on seven standards, including these three that may provide too much

[5] *Police law rips off taxpayers*, Wisconsin State Journal (Nov. 27, 1996) (Editorial).
[6] John Diedrich, *Bill would halt pay for fired officers; Milwaukee cops in appeal process still get checks*, Milwaukee Journal Sentinel (Aug. 30, 2005).

discretion as to what constitutes "just cause": (1) whether the officer could reasonably be expected to have had knowledge of the probable consequences of the conduct; (2) whether the rule or order the officer violated is reasonable; and (7) whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the officer's record of service with the chief's department. Wis. Stat. Ann. § 62.13(5)(em). The same "just cause" standard applies to any judicial appeal of the board's decision. Wis. Stat. Ann. § 62.13(5)(i).

- All officers must be compensated while suspended pending disposition of charges. Wis. Stat. Ann. § 62.13(5)(h).

* * * * *

Notably, Wisconsin's Law Enforcement Officers' Bill of Rights as discussed above only applies to LEOs employed by a city, village, town, or county (i.e., not the state police). Wis. Stat. Ann. § 164.02(1)(b). Similarly, Wis. Stat. Ann. § 62.13 above only applies to cities with a population of at least 4,000.

In addition, the board referred to in Wis. Stat. Ann. § 62.13 above is composed of citizens appointed by the mayor, so there is better opportunity for citizen oversight in Wisconsin than elsewhere: Cities with a population of 4,000 or more are required to have a board of police and fire commissioners, made up of five citizens appointed by the mayor, that rule on police discipline. Wis. Stat. Ann. § 62.13(1).

Finally, Wisconsin law has specific requirements for the investigation of an "officer-involved death," which is a death that results directly from an LEO's action or omission while on duty or off duty but performing activities within the LEO's law enforcement duties. Wis. Stat. Ann. § 175.47(1)(c). Such investigations must be conducted by at least two investigators, one of whom is the lead investigator and neither of whom is employed by the agency employing the officer. Wis. Stat. Ann. § 175.47(3)(a). The investigators conducting the investigation must, "in an expeditious manner," provide a complete report to the district attorney of the county where the death occurred. Wis. Stat. Ann. § 175.47(5)(a). If the district attorney decides not to prosecute, the investigators shall release the report but may delete Information that would not be subject to disclosure pursuant to Wisconsin's Open Records Act. Wis. Stat. Ann. § 175.47(5)(b).

Please let us know if you need further information regarding Wisconsin's Law Enforcement Officers' Bill of Rights.