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HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 205

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE LAW ENFORCEMENT OFFICER
BILL OF RIGHTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 92, Title 11 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 Chapter 92. ~~Law Enforcement Officers' Bill of Rights~~ Police Officers'

4 Due Process, Accountability, and Transparency

5 § 9200. Limitations on political activity; "law-enforcement officer" defined; rights of officers under investigation.

6 (b) For purposes of this ~~chapter~~ chapter:

7 (1) "Detailed narrative" means a complete description of the facts, steps taken to further an investigation,
8 evidence collected, conclusions reached, the names of officers involved for whom misconduct was substantiated, any
9 discipline assigned in connection with the event, and the employment status of disciplined officers.

10 (2) "Formal investigation" refers to an investigation initiated at the request of management after a preliminary
11 determination has been made that a rule or policy of the department may have been violated. A formal investigation is
12 typically conducted by an internal affairs department or its equivalent and is distinguished from an informal inquiry
13 that is more properly considered routine employer supervision.

14 (3) "Informal inquiry" means questioning by supervisory personnel for purposes of making a preliminary
15 determination whether an officer has violated a rule or policy of the department. An informal inquiry is made only to
16 obtain preliminary facts in order to determine whether a formal investigation should be initiated. An informal inquiry
17 must be conducted in accordance with state and federal law.

18 (4) a “~~law enforcement officer~~” is defined as a “Law-enforcement officer” or “officer” means a full-time or
19 part-time police officer who is a sworn member of the Delaware State Police, of the Wilmington City Police
20 Department, of the New Castle County Police, of the University of Delaware Police Division, the Delaware State
21 University Police Department, of the police force established by the Delaware River and Bay Authority, or of the
22 police department, bureau of police or police force of any incorporated municipality, city or town within this State or
23 who is a sworn uniformed police or enforcement officer of the Department of Natural Resources and Environmental
24 Control or of the Delaware State Capital Police, or a Probation and Parole Officer of the Department of Correction or a
25 Probation and Parole Officer of the Department of Services for Children, Youth and their Families, or a State Fire
26 Marshall Deputy or a state detective or special investigator of the Department of Justice, an agent of the State Police
27 Drug Diversion Unit or an agent of the State Division of Alcohol and Tobacco Enforcement; provided, however, that
28 except for the disclosures required under § 9210 of this chapter, this chapter shall not apply to the Superintendent or
29 Deputy Superintendent of the Delaware State Police, or to any officer above the rank of Captain in the Delaware State
30 Police, or to the chief of police of any police force in this State, or to any other officer who is the highest ranking
31 officer in the law-enforcement agency. ~~Furthermore, no law enforcement officer not a member of 1 of the above~~
32 ~~agencies shall be covered by this chapter. An officer who is not a member of one of the above agencies is not covered~~
33 by this chapter.

34 (5) “Sustained finding” means after the conclusion of an investigation, a law-enforcement officer’s violation
35 of law, rule, policy, regulation, or guideline was established by a preponderance of the evidence. “Preponderance of the
36 evidence” means more probably true than not.

37 (c) Whenever a law-enforcement officer is under formal investigation ~~or~~ and is subjected to questioning ~~for any~~
38 ~~reason~~ which could lead to disciplinary action, ~~demotion or dismissal~~, the investigation or questioning shall be conducted
39 under the following conditions:

40 (3) The law-enforcement officer under investigation shall be informed of the name, rank and command of the
41 officer in charge of the ~~investigation~~. investigation at a time and at the discretion of the department, but no later than
42 prior to formal questioning. All questions directed to the officer shall be asked by and through no more than 2
43 investigators. No formal complaint against a law-enforcement officer seeking dismissal or suspension or other formal
44 disciplinary action shall be prosecuted under departmental rule or regulation unless the complaint is supported by
45 substantial evidence derived from an investigation by an authorized member of the department or another officer who
46 is certified by the Council on Police Training pursuant to Chapter 84 of this title and has experience and/or training on

47 conducting an internal law-enforcement investigation and is appointed by the Chief of ~~Police~~ Police, or the Chief's
48 designee, of the law-enforcement department to conduct the investigation of the officer in question.

49 (7) A complete ~~record, either written, taped or, if taped, transcribed as soon as practicable,~~ record shall be kept
50 of all interviews held in connection with the administrative ~~investigation upon notification that substantial evidence~~
51 ~~exists for seeking an administrative sanction of the law-enforcement officer.~~ investigation. Upon request, a copy of
52 the record or recording of the interviews shall be provided to the ~~officer or the officer's counsel at the officer's expense~~
53 upon request. officer.

54 (8) If the law-enforcement officer under interrogation is under arrest or may reasonably be placed under arrest
55 as a result of the investigation, the officer shall be informed of the officer's rights, including the reasonable possibility
56 of the officer's arrest prior to the commencement of the interrogation.

57 (9) Upon request, any officer under questioning shall have the right to be represented by counsel or other
58 representative of the officer's choice, who shall be present at all times during the questioning unless waived in writing
59 by the investigated officer. The questioning shall be suspended for a reasonable period of time if the officer requests
60 representation until such time as the officer can obtain the representative requested if reasonably available.

61 (10) An officer who is charged with violating any departmental rules or regulations, or the officer's
62 representative, will be provided access to transcripts, records, written statements, written reports, ~~analyses and video~~
63 ~~tapes and video and audio recordings~~ pertinent to the case if they are exculpatory, intended to support any disciplinary
64 action or are to be introduced in the departmental hearing on the charges involved. Upon demand by the officer or
65 counsel, they shall be produced within 48 hours of the written notification of the charges.

66 (11) At the conclusion of the ~~administrative~~ formal investigation, the investigator shall inform in writing the
67 officer of the investigative ~~findings~~ findings, conclusions, and any recommendation for further action. Notwithstanding
68 anything in this chapter to the contrary, upon completion of the investigation and any related proceedings, an officer is
69 entitled to access investigatory files regardless of whether charges are sustained.

70 (12) ~~All~~ Except as set forth in subsection (d) of this section and § 9210 of this title, records compiled as a
71 result of any investigation subject to the provisions of this chapter and/or a contractual disciplinary grievance
72 procedure ~~shall be and remain~~ are confidential and ~~shall~~ may not be released to the public. A contract or collective
73 bargaining agreement that purports to extend confidentiality provisions relating to officer personnel or disciplinary
74 records beyond the scope set forth in this chapter is void and unenforceable as against public policy.

75 (13) Whenever an investigation is initiated, it must be completed, regardless of the employment status of the
76 law-enforcement officer under investigation. The employing department shall maintain the file relating to the

77 investigation regardless of whether or not the officer separates from the employing department prior to the initiation or
78 completion of a formal investigation and regardless of the investigation's conclusion. Any sustained finding must be
79 reported to the Council on Police Training.

80 (d) Unless otherwise required by this chapter, no law-enforcement agency shall be required to disclose in any civil
81 proceeding, other than those brought by a citizen against a law-enforcement officer alleging that the officer breached the
82 officer's official duties and that such breach resulted in injury or other damage to the citizen, any:

83 (1) Personnel file; or

84 (2) Internal affairs investigatory file compiled in connection with a law-enforcement officer under
85 investigation or subjected to questioning for any reason which could lead to disciplinary action, demotion, or dismissal.

86 § 9203. Hearing — Required on suspension or other disciplinary action.

87 If a law-enforcement officer is: (1) suspended for any disciplinary reason, or (2) charged with conduct alleged to
88 violate the rules or regulations or general orders of the agency that employs the officer, or (3) charged with a breach of
89 discipline of any kind, which charge could lead to any form of disciplinary action (other than a reprimand) which may
90 become part of the officer's permanent personnel record, then that officer shall be entitled to a hearing which shall be
91 conducted in accordance with this chapter unless a contractual disciplinary grievance procedure executed by and between
92 the agency and the bargaining unit of that officer is in effect, in which case the terms of that disciplinary grievance
93 procedure shall take precedence and govern the conduct of the hearing.

94 § 9204. Hearing — Scheduling; notice.

95 In the event an officer is entitled to a hearing, a hearing shall be scheduled within a reasonable period of time from
96 the alleged incident, but in no event more than ~~30~~ 45 days following the conclusion of the internal investigation, unless
97 waived in writing by the charged officer. The officer shall be given written notice of the time and place of the hearing and
98 the issues involved, including a specification of the actual facts that the officer is charged with having committed; a
99 statement of the rule, regulation or order that those facts are alleged to violate; and a copy of the rule, regulation or order.
100 The charge against the law-enforcement officer shall advise the officer of the alleged facts and that the violation of the rule
101 constituted a basis for discipline, and shall specify the range of applicable penalties that could be imposed.

102 § 9210. Authorized disclosures.

103 (a) (1) Beginning on [the effective date of this Act], an investigating agency shall prepare, within 30 days
104 following the completion of a formal investigation and the conclusion of any hearing required by this chapter, a detailed
105 narrative of the investigation, not including any compelled statements of an officer, and forward the detailed narrative to the
106 the Criminal Justice Council with regard to any of the following:

107 a. Incidents where a law-enforcement officer has discharged a firearm at a person.

108 b. A law-enforcement officer’s use of force that results in serious physical injury.

109 c. An investigation that results in a sustained finding that a law-enforcement officer engaged in a sexual

110 assault or sexual harassment. For purposes of this paragraph, “sexual assault” means the commission or attempted

111 initiation of a sexual act by means of force, threat, coercion, extortion, or offer or implication of leniency or

112 official favor, under the color of authority. Propositioning sex or commission of a sexual act while an officer is on

113 duty is deemed a “sexual assault.”

114 d. An investigation that results in a sustained finding that a law-enforcement officer engaged in dishonest

115 conduct. This includes, but is not limited to sustained findings of perjury, false statements, filing false reports,

116 witness tampering, and destruction, falsification, or concealment of evidence.

117 e. A sustained finding of domestic violence by a law-enforcement officer.

118 (2) The detailed narratives required by this subsection may not reveal the name or any personal identifying

119 information of a victim or witness. In a domestic violence case where revealing the name of the officer would also

120 allow identification of the victim, the officer’s name may be redacted.

121 (3) The Criminal Justice Council shall post the narratives they receive under this paragraph on their website

122 within 30 calendar days of receipt.

123 (b) Departments shall provide information to a complainant or victim of officer misconduct regarding the

124 resolution of that complaint, including the investigative findings, conclusions, and any recommendation for further action.

125 (c) (1) Notwithstanding anything in this chapter to the contrary, the Department of Justice must disclose in a

126 criminal or delinquency matter, at the request of a defendant, all existing records, including those contained in a personnel

127 or disciplinary file, relating to sustained findings of misconduct relating to perjury, witness tampering, intentional false

128 statements or false reports, or destruction, falsification, or concealment of evidence by an officer who participated in the

129 investigation or prosecution.

130 (2) The Department of Justice is responsible for gathering records from law-enforcement agencies that are

131 responsive to a request under paragraph (c)(1) of this section and shall facilitate the transfer of records, pursuant to a

132 confidentiality order entered by the court that restricts use or dissemination of such information beyond proceedings in

133 that case and requires secure handling of the records.

134 (3) The Department of Justice shall diligently advise all agencies involved in criminal and juvenile justice

135 matters of the agencies’ continuing duty to identify, preserve, and disclose to the prosecutor, information required to be

136 disclosed under this subsection.

137 (4) Prior to the transfer of records under this subsection, the Department of Justice shall redact all of the
138 following:

139 a. The home address, home telephone number, work or school address, work telephone number, e-mail
140 address, and social security number of a law-enforcement officer or officer's family member, a complainant or
141 complainant's family member, or a witness or witness' family member.

142 b. The medical history and detailed medical information of a law-enforcement officer or a complainant.
143 This paragraph (c)(3)b. may not be construed to permit redactions to any descriptions of injuries or conditions
144 that are the subject of the complaint or caused by or resulting from a law-enforcement officer's alleged conduct.

145 (d) A law-enforcement agency must disclose to the Department of Justice unsubstantiated allegations of
146 misconduct in which the following three criteria are satisfied:

147 (1) A formal investigation is ongoing.

148 (2) The allegations relate to perjury, witness tampering, intentional false statements or false reports, or
149 destruction, falsification, or concealment of evidence by an officer who participated in the investigation or prosecution
150 of a pending criminal matter.

151 (3) The misconduct at issue is alleged to have occurred in the course of the officer's participation in the
152 investigation or prosecution of that same pending criminal matter.

153 (e) In addition to any existing obligation under federal or State law, the Department of Justice has the following
154 disclosure obligations to the defense in a criminal or delinquency matter:

155 (1) The Department shall immediately disclose an unsubstantiated allegation of misconduct meeting the
156 criteria in subsection (d) of this section where the evidence or information is exculpatory.

157 (2) The Department shall disclose an unsubstantiated allegation of misconduct meeting the criteria in
158 subsection (d) of this section where the evidence or information is admissible for impeachment of a witness.

159 (3) The Department shall submit to the Court for in camera review all unsubstantiated allegations of
160 misconduct meeting the criteria in subsection (d) of this section that are not otherwise disclosed to the defendant.
161 Upon review, the Court shall order disclosure of an unsubstantiated allegation of misconduct if it is determined to be
162 exculpatory or admissible for impeachment of witness. Where the Court orders disclosure, the disclosure shall be made
163 under a protective order.

164 (f) If an allegation disclosed under subsection (d) and (e) of this section is determined at the conclusion of the
165 formal investigation to be unsubstantiated, information relating to that allegation may not be used in any criminal or
166 delinquency proceeding.

167 (g) A law-enforcement agency must require every new hire to sign an agreement allowing that officer's personnel
168 file, and any disciplinary or investigative records relating to misconduct to be shared with any future law-enforcement
169 agency, in this State or another jurisdiction, that hires or has made a conditional offer of hire to that officer. The sharing of
170 these records with another law-enforcement agency that hires or makes a conditional offer of hire to an officer is not a
171 violation of this chapter.

172 9211. Annual reporting and record retention.

173 (a) Beginning in [the first full calendar year following enactment of this Act], each law-enforcement agency shall
174 annually report to the CJC, and the CJC shall post on its website, all of the following information:

175 (1) The number of public complaints and internal complaints relating to police misconduct that the department
176 receives each year, broken down by subject matter of the complaint.

177 (2) The number of formal investigations undertaken by the department each year, and the number of
178 complaints resolved without a formal investigation.

179 (3) The number of formal investigations that resulted in a sustained finding of misconduct, an unsubstantiated
180 finding, or any other disposition.

181 (b) Notwithstanding any other law to the contrary, records relating to any incident for which a detailed narrative is
182 required to be publicly posted pursuant to this chapter, shall be preserved for at least 25 years.

SYNOPSIS

This Act makes a number of revisions to the Law-Enforcement Officer's Bill of Rights in Title 11 of the Delaware Code. It adds part-time officers to the coverage of the chapter. It distinguishes between formal investigations and informal inquiries, but requires that even informal inquiries must comport with federal and State law, including *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975) and *Garrity v. New Jersey*, 385 U.S. 493 (1967).

This Act requires that a detailed narrative of an internal investigation must be prepared by an investigating agency and publicly posted in any case involving use of force that results in serious physical injury; the discharge of a firearm; a sustained finding of sexual assault or sexual harassment; a sustained finding of dishonesty; or a sustained finding of domestic violence. Further, it requires that an investigation into officer misconduct must be completed, regardless of the employment status of the officer. I.e., even if an officer resigns or retires while an investigation is pending, the department must complete the investigation and report sustained findings of misconduct to the Council on Police Training. The Act also requires a department to provide information to a complainant or victim of officer misconduct sufficient to reasonably address concerns regarding the investigation and its outcome, including the investigative findings, conclusions, and any recommendations for further action.

Finally, the Act requires, upon request of a defendant in a criminal or delinquency case, and through the Department of Justice, all existing records relating to sustained findings of misconduct relating to perjury, intentional false statements or false reports, or destruction, falsification, or concealment of evidence by an officer who participated in the investigation or prosecution. It also provides that law-enforcement officers must be required, upon hire, to sign an agreement allowing the hiring agency to provide copies of that officer's personnel file and disciplinary and investigative records with any other law-enforcement agency that makes an offer or conditional offer of hire to that officer in the future.

The CJC will aggregate and post all of the narratives required to be prepared under this chapter on its website, along with an annual report of the following: (1) The number of public complaints and internal complaints relating to police misconduct that the department received each year, broken down by subject matter of the complaint; (2) The number of formal investigations undertaken by the department each year, and the number of complaints resolved without a formal investigation; (3) The number of formal investigations that resulted in a sustained finding of misconduct, an unsubstantiated

finding, or any other disposition. Records relating to any incident for which a detailed narrative is required to be prepared and posted must be preserved for at least 25 years.

This Substitute differs from the original House Bill No. 205 as follows:

1. It adds sustained findings that a law-enforcement officer engaged in sexual harassment to the required public disclosures.
2. It broadens the requirement for public disclosures relating to sustained findings of dishonesty.
3. It limits the requirement for public disclosures relating to the discharge of a firearm to those instances where the firearm is discharged at a person.
4. It clarifies that the required disclosures apply to chiefs of police and other high ranking officials.
5. It moves all of the disclosures into a single section (§ 9210).
6. It requires, instead of permitting, that the victim or complainant with respect to misconduct must be told of the conclusion of the inquiry.
7. It clarifies that the public detailed narratives required for certain incidents is a prospective requirement, while disclosures in a criminal or delinquency matter pertain to all relevant existing records.
8. It requires additional disclosures to the defendant of investigations into dishonesty-related misconduct that occurred in the course of the investigation of the pending matter; requires law-enforcement agencies to disclose to the Department of Justice such records; and provides if the investigation finds the allegation unsubstantiated it may not be used in any criminal or delinquency proceeding.
9. Reinforces the duty of the State to preserve and disclose records underlying misconduct dealt with in this chapter.
10. Reverts references to the Police Officer Standards and Training Commission to Council on Police Training.
11. Sets a timeline for the preparation and posting of required public disclosures.