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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 149

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

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

1 Section 1. Amend § 9200, Title 11 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 9200. Limitations on political activity; "law-enforcement officer" defined; rights of officers under investigation.

4 (c) Whenever a law-enforcement officer is under investigation or is subjected to questioning for any reason ~~which~~
5 ~~could-that may~~ lead to disciplinary action, ~~demotion-demotion~~, or dismissal, the investigation or questioning ~~shall-must~~ be
6 conducted under the following conditions:

7 (1) The questioning ~~shall-must~~ be conducted at a reasonable hour, ~~preferably at a time when the officer is on~~
8 ~~duty~~ unless the gravity of the investigation in the opinion of the investigator is of such degree that immediate
9 questioning is required.

10 (2) ~~The questioning shall take place at the agency headquarters or at the office of the local troop or police unit~~
11 ~~in which the incident allegedly occurred as designated by the investigating officer or unless otherwise waived in~~
12 ~~writing by the officer being investigated. [Repealed.]~~

13 (3) ~~The law-enforcement officer under investigation shall be informed of the name, rank and command of the~~
14 ~~officer in charge of the investigation. All questions directed to the officer shall be asked by and through no more than 2~~
15 ~~investigators. No formal complaint against a law-enforcement officer seeking dismissal or suspension or other formal~~
16 ~~disciplinary action shall be prosecuted under departmental rule or regulation unless the complaint is supported by~~
17 ~~substantial evidence derived from an investigation by an authorized member of the department or another officer who~~
18 ~~is certified by the Council on Police Training pursuant to Chapter 84 of this title and has experience and/or training on~~
19 ~~conducting an internal law-enforcement investigation and is appointed by the Chief of Police of the law-enforcement~~
20 ~~department to conduct the investigation of the officer in question. [Repealed.]~~

(4) The law-enforcement officer under investigation ~~shall~~must be informed in writing of the nature of the investigation ~~prior to~~before being questioned.

(5) Interview sessions ~~shall~~must be for reasonable periods of time. There ~~shall~~must be times provided for the officer to allow for such personal necessities and rest periods as are reasonably necessary.

(6) Except ~~upon~~on refusal to answer questions ~~pursued in a valid~~ or otherwise taking actions that impede an investigation, no a law-enforcement officer shallmay not be threatened with transfer, ~~dismissal~~dismissal, or other disciplinary action.

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

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

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

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

(11) At the conclusion of the administrative investigation, the investigator shall ~~inform in writing the~~inform, in writing, a law-enforcement officer of the investigative findings and any recommendation for further action.

(12) ~~All records~~ A law-enforcement disciplinary record compiled as a result of any investigation subject to the provisions of this chapter ~~and/or or a contractual disciplinary grievance procedure shall be and remain confidential and shall not be released to the public.~~ that is created before, on, or after [the effective date of this Act] is a public record, as defined under § 10002 of Title 29, and is not subject to an exception to the definition of a public record.

a. For purposes of this paragraph (c)(12):

1. "Law-enforcement disciplinary record" means a personnel file or internal affairs investigatory file compiled in connection with a law-enforcement officer who was or is under investigation or subjected to questioning for any reason which may, may have, or did lead to the law-enforcement officer's discipline, demotion, or dismissal.

2. "Law-enforcement disciplinary record" includes all of the following:

A. Any complaints, allegations, or charges pertaining to a law-enforcement officer.

B. The name of the law-enforcement officer complained of or charged.

C. The transcript of any disciplinary trial or hearing, including any exhibits introduced at the trial or hearing.

D. The disposition of any proceeding.

E. The final written opinion or memorandum supporting the disposition and discipline, if any, imposed, including the law-enforcement agency's complete factual findings and analysis of the conduct and appropriate discipline of the law-enforcement officer.

b. The following information in a law-enforcement disciplinary record must be redacted before it is disclosed under this paragraph (c)(12) or the Freedom of Information Act, Chapter 100 of Title 29:

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

2. The medical history and detailed medical information of a law-enforcement officer or a complainant. This paragraph (c)(12)b.2. may not be construed to permit redactions to any descriptions of injuries or conditions that are the subject of the complaint or caused by or resulting from a law-enforcement officer's alleged conduct.

3. The names of any complainants or witnesses.

c. A law-enforcement disciplinary record must be disclosed in any civil or criminal proceeding.

d. A law enforcement disciplinary record must never be destroyed or discarded by law enforcement.

e. Subchapter IV of Chapter 7 of Title 19 does not apply to this paragraph (c)(12).

f. For a collective bargaining agreement, other agreement, or arbitration award approved before, on, or after [the effective date of this Act], if a provision in the agreement or award pertaining to the disclosure of law-enforcement disciplinary records would prevent the disclosure of the records required to be disclosed under this paragraph (c)(12), this paragraph (c)(12) prevails and the records must be disclosed.

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

~~(1) Personnel file; or~~

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

[Repealed.]

Section 2. Amend § 9203, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

(a) If a law enforcement officer is: Except as otherwise provided by subsection (b) of this section, a law-enforcement officer is entitled to a hearing conducted in accordance with this chapter if any of the following occur:

(1) The law-enforcement officer is suspended for any reason, or reason.

(2) The law-enforcement officer is charged with conduct alleged to violate the rules or regulations or general orders of the agency that employs the officer, or officer.

(3) The law-enforcement officer is charged with a breach of discipline of any kind, which charge could lead to any form of disciplinary action (other than a reprimand) action, other than a reprimand, and which may become part of the officer's permanent personnel record, then that officer shall be entitled to a hearing which shall be conducted in accordance with this chapter record.

(b)(1) unless Except as otherwise provided under paragraph (b)(2) of this section, if a contractual disciplinary grievance procedure executed by and between the a law-enforcement officer's agency and the bargaining unit of that officer is in effect, in which case the terms of that the terms of the contractual disciplinary grievance procedure shall take takes precedence and govern governs the conduct of the hearing.

(2) A contractual disciplinary grievance procedure may not preclude procedures that allow for community review of law-enforcement officer conduct.

Section 3. Amend § 9204, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9204. Hearing — Scheduling; notice.

(a) ~~In the event an~~ If a law-enforcement officer is entitled to a hearing, a hearing ~~shall~~ must 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 the hearing is waived in writing by the ~~charged~~ officer.

(b) ~~The officer shall~~ A law-enforcement officer must be given written notice of the time and place of the hearing and the issues involved, including a specification of the actual facts that the officer is charged with having committed; a statement of the rule, ~~regulation~~ regulation, or order that those facts are alleged to violate; and a copy of the rule, ~~regulation~~ regulation, or order.

(c) The charge against the law-enforcement officer ~~shall~~ must advise the officer of the alleged facts and that the violation of the rule constituted a basis for discipline, and ~~shall~~ must specify the range of applicable penalties that could be imposed.

Section 4. Amend § 9205, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9205. Hearing — Procedure.

(a) An official record including testimony and exhibits ~~shall~~ must be kept of the hearing.

(b)(1)a. ~~The hearing shall be conducted within the department by an impartial board of officers. Except as provided under paragraph (b)(1)b. of this section, a hearing required for a law-enforcement officer under § 9203(a) of this title must be conducted by an impartial tribunal of law-enforcement officers within the law-enforcement officer's agency. If an impartial board cannot be convened, the Criminal Justice Council shall convene a tribunal of 3 or more law-enforcement officers to hold the hearing.~~

b. A state agency, county, or municipality that operates a law-enforcement agency may establish a community review board authorized to do one or more of the following:

1. Hear and decide law-enforcement disciplinary matters, as a tribunal for a hearing or on appeal from a hearing.

2. Gather statistics and data concerning allegations of misconduct by law-enforcement officers.

3. Provide public reports regarding trends in law-enforcement discipline.

4. Make recommendations to the state agency's, county's, or municipality's chief law-enforcement officer and to the Council on Police Training concerning law-enforcement policy and training.

140 5. In connection with any proceeding, issue subpoenas for witnesses or other sources of evidence, on
141 the community review board's initiative or at the request of a party to the proceeding.

142 (2) The prosecuting party and the law-enforcement officer ~~and/or~~ or the officer's representative ~~shall~~ must be
143 given an opportunity to present evidence and argument with respect to the issues involved. Both the ~~department~~
144 prosecuting party and the law-enforcement officer may be represented by legal counsel. ~~In the event an impartial board~~
145 ~~cannot be convened, then a board of 3 officers or more shall be convened under the auspices of the Delaware Criminal~~
146 ~~Justice Council.~~

147 (3) ~~Any officer appointed under this subsection, either within the department or~~ A person appointed to a
148 tribunal charged with conducting a hearing under this chapter, whether that person is appointed by a law-enforcement
149 agency or under the auspices of the Criminal Justice Council, shall not be or as part of a community review board, is
150 not liable for civil damages from any acts or omissions arising out of ~~such officer's~~ the person's service on the ~~board~~
151 tribunal as long as the member of the ~~board of officers~~ tribunal acted in good faith and without malice in carrying out
152 that member's responsibilities or duties. A member of ~~the board of officers~~ the tribunal is presumed to have acted in
153 good faith and without malice unless proven otherwise.

154 Section 5. Amend § 9209, Title 11 of the Delaware Code by making deletions as shown by strike through and
155 insertions as shown by underline as follows:

156 § 9209. Application of chapter.

157 The chapter ~~shall apply~~ applies to all law-enforcement disciplinary proceedings throughout the State, ~~conducted by~~
158 concerning the law-enforcement agencies specified in § 9200(b) of this title.

159 Section 6. If any provision of this Act or the application of this Act to any person or circumstance is held invalid,
160 the provisions of this Act are severable if the invalidity does not affect the other provisions of this Act that can be given
161 effect without the invalid provision or the application of this Act that can be given effect without the invalid application.

SYNOPSIS

Currently, Delaware is in the minority of states that bar public access to police misconduct records, and is the only state in the country with a specific confidentiality clause in its Law-Enforcement Officers' Bill of Rights ("LEOBOR").

Under Delaware's LEOBOR (Chapter 92 of Title 11 of the Delaware Code) police misconduct records are secret and not accessible to criminal defense counsel, the media, or the public. The only non-law enforcement entities that have access to police misconduct records are civil plaintiff attorneys who are suing the police for causing physical injury or damages. This means that other than the police department where the officer works, and plaintiff lawyers in some types of cases, no one knows if an active member of a police force has lied, used excessive force in the past, abused their authority, tampered with evidence, or engaged in sexual misconduct.

This information is tremendously important. Law-enforcement officers are pillars of their community and often the sole or most significant witnesses in criminal trials, where defendants are sometimes facing the rest of their lives in prison. This Act would ensure that prosecutors and criminal defense counsel will have access to all law-enforcement misconduct records, created before, on, or after the effective date of this Act, making our criminal justice system fairer and improving

trust within our community. And, public access, through Delaware's Freedom of Information Act (Chapter 100 of Title 29 of the Delaware Code) will increase transparency and allow for more meaningful oversight.

This Act removes LEOBOR's confidentiality clause and adds affirmative language to LEOBOR that law-enforcement disciplinary records are public records. And, this Act makes clear that the only materials that are released relate to disciplinary issues, and do not include personal information.

Additionally, this Act makes changes to LEOBOR to increase transparency and enable the creation and operation of effective community review boards at the state, county, and municipal level.

Finally, this Act makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

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