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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
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 (b) For purposes of this ~~chapter~~ a chapter:

5 (1)a. "Law-enforcement disciplinary record" means information compiled in connection with a law-
6 enforcement officer who was under investigation or subjected to questioning for any reason which led to the law-
7 enforcement officer's discipline, demotion, or dismissal.

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

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

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

11 3. The transcript of any disciplinary trial, hearing, or tribunal, including any exhibits introduced at
12 the trial, hearing, or tribunal.

13 4. The disposition of any proceeding.

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

17 (2)a. ~~"law-enforcement~~ Law-enforcement officer" is defined as means a police officer who is a sworn member
18 of one of the following:

19 1. the The Delaware State Police, Police.

~~2. of the The~~ Wilmington City Police ~~Department, Department.~~
~~3. of the The~~ New Castle County ~~Police, Police.~~
~~4. of the The~~ University of Delaware Police ~~Division, Division.~~
~~5. the The~~ Delaware State University Police ~~Department, Department.~~
~~6. of the A~~ police force established by the Delaware River and Bay ~~Authority, Authority.~~
~~7. or of the A~~ police department, bureau of ~~police police,~~ or police force of any incorporated municipality, ~~city city,~~ or town within this ~~State State.~~
~~8. or who is a sworn uniformed police or enforcement officer of the The~~ Department of Natural Resources and Environmental ~~Control Control.~~
~~9. or of the Delaware State Capital Police, The Capitol Police.~~
~~10. or a A~~ Probation and Parole Officer of the Department of ~~Correction Correction.~~
~~11. or a A~~ Probation and Parole Officer of the Department of Services for Children, Youth and their Families, ~~Families.~~
~~12. or a A~~ State Fire Marshall ~~Deputy Deputy.~~
~~13. or a A~~ state detective or special investigator of the Department of ~~Justice, Justice.~~
~~14. an An~~ agent of the State Police Drug Diversion ~~Unit Unit.~~
~~15. or an An~~ agent of the State Division of Alcohol and Tobacco ~~Enforcement, Enforcement.~~
 b. ~~provided, however, that this chapter shall not apply to~~ “Law-enforcement office” does not include any of the following:
~~1. the The~~ Superintendent or Deputy Superintendent of the Delaware State ~~Police, Police.~~
~~2. or to any Any~~ police officer above the rank of Captain in the Delaware State ~~Police, Police.~~
~~3. or to the The~~ chief of police of any police force in this ~~State, State.~~
~~4. or to any Any~~ other officer who is the ~~highest-ranking highest-ranking~~ officer in ~~the a~~ law-enforcement ~~agency- agency in this State.~~
~~5. Furthermore, no law-enforcement A~~ police officer ~~who is~~ not a member of 1 of the ~~above agencies shall be covered by this chapter. law-enforcement agencies under paragraph (b)(2)a. of this section.~~
 (3) “Serious” means an allegation of misconduct that involves or includes any of the following conduct:
 a. Dishonesty or deceit.
 b. Excessive or unauthorized use of force, as defined by the law-enforcement officer’s law-enforcement agency.

50 c. Conduct unbecoming of a law-enforcement officer, as defined by the law-enforcement officer's law-
51 enforcement agency.

52 d. Falsifying an official document, report, or evidence.

53 e. Tampering with witnesses or evidence or hindering prosecution.

54 f. An incident in which a law-enforcement officer commits a sexual assault, including an attempt to
55 coerce sex or proposition sex while on duty.

56 g. Domestic violence incidents in which a law-enforcement officer is the offender.

57 h. Conduct in which sanctions result in any of the following:

58 1. Termination.

59 2. Reduction in rank.

60 3. Suspension lasting 40 or more hours.

61 i. Conspiracy to engage in conduct under paragraph (b)(3)a. through (b)(3)h. of this section.

62 (4) "Substantiated" means an allegation of misconduct, including any of the following:

63 a. Misconduct the law-enforcement officer's agency investigated and determined to be credible.

64 b. Misconduct the law-enforcement officer has admitted occurred.

65 c. Misconduct that has resulted in an adjudication or other finding of guilt or responsibility by a tribunal,
66 appellate body, or other authorized decision-making body other than a community review board.

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

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

73 (2) The questioning shall take place at the agency headquarters or at the office of the local troop or police unit
74 in which the incident allegedly occurred as designated by the investigating officer or unless otherwise waived in
75 writing by the officer being investigated.

76 (3) ~~The law-enforcement officer under investigation shall be informed of the name, rank and command of the~~
77 ~~officer in charge of the investigation. All questions directed to the officer shall be asked by and through no more than 2~~
78 ~~investigators. No formal complaint against a law-enforcement officer seeking dismissal or suspension or other formal~~
79 ~~disciplinary action shall be prosecuted under departmental rule or regulation unless the complaint is 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. [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 law-enforcement 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 investigation, ~~no~~a law-enforcement officer ~~shall~~may 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 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~~ has the right to be represented by counsel or other representative of the officer's ~~choice, who shall~~choice. The 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 officer requests representation until such time as the officer can obtain the representative ~~requested~~requested, if reasonably available.

(10) ~~An~~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 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)~~a. All records compiled as a result of any investigation subject to the provisions of this chapter and/or a contractual disciplinary grievance procedure shall be and remain confidential and shall not be released to the public.~~
Except as provided under paragraph (c)(12)b. or (c)(12)c. of this section, a law-enforcement disciplinary record compiled or created as a result of an investigation subject to the provisions of this chapter or a contractual disciplinary grievance procedure is privileged and confidential.

b. A law-enforcement disciplinary record compiled or created as a result of an investigation into substantiated serious misconduct that is compiled or created 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 any exception to the definition of a public record, if all of the following apply:

1. The law-enforcement officer who committed the substantiated serious misconduct has exhausted the officer's hearing and appeal rights under this chapter.

2. The law-enforcement officer who committed the substantiated serious misconduct is not subject to a pending criminal investigation or prosecution at the time of the request for the law-enforcement disciplinary record, as confirmed by the Division of Civil Rights and Public Trust.

c. A law-enforcement disciplinary record compiled or created as a result of an investigation into misconduct that is substantiated but not serious or not substantiated and is compiled or created on or after [the effective date of this Act] must be disclosed to a community review board established under § 9210 of this title on request of the community review board. Before the law-enforcement disciplinary record is disclosed, information that would reveal the identity of the law-enforcement officer must be redacted and a unique identifier assigned to the officer by the officer's law-enforcement agency.

d. 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)d.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.

e. A law-enforcement agency shall retain a law-enforcement disciplinary record for a minimum of 3 years after a law-enforcement officer's separation from employment with the law-enforcement agency.

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.~~
Unless otherwise provided under this chapter, a law enforcement officer is entitled to the same privileges and immunities with respect to records that are not law-enforcement disciplinary records that are available to all employees as set forth in this Code or at common law.

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.

168 (b)(1) unless Except as otherwise provided under paragraphs (b)(2) and (b)(3) of this section, if a contractual
169 disciplinary grievance procedure executed by and between the a law-enforcement officer's agency and the bargaining unit
170 of that officer is in effect, in which case the terms of that the terms of the contractual disciplinary grievance procedure shall
171 take takes precedence and govern governs the conduct of the hearing.

172 (2) A contractual disciplinary grievance procedure may not diminish or modify any of the rights or privileges
173 set forth under this chapter.

174 (3) A contractual disciplinary grievance procedure may not diminish or modify any of the rights or privileges
175 set forth in Chapter 94 of this title and may not infringe on the rights of those who allege or investigate misconduct as
176 set forth under this chapter.

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

179 § 9204. Hearing — Scheduling; notice.

180 (a) In the event an If a law-enforcement officer is entitled to a hearing, a hearing shall must be scheduled within a
181 reasonable period of time from the alleged incident, but in no event more than 30 days following the conclusion of the
182 internal investigation, unless the hearing is waived in writing by the charged officer.

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

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

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

192 § 9205. Hearing — Procedure.

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

194 (b)(1)a. The hearing shall be conducted within the department by an impartial board of officers. Except as
195 provided under paragraph (b)(1)b. of this section, a hearing required for a law-enforcement officer under § 9203(a) of this
196 title must be conducted by an impartial tribunal of law-enforcement officers within the law-enforcement officer's agency.

b. If an impartial tribunal cannot be convened, the Criminal Justice Council shall convene a tribunal of 3 or more law-enforcement officers to hold the hearing.

(2) The prosecuting party and the law-enforcement officer ~~and/or~~ or the officer's representative ~~shall~~ must be given an opportunity to present evidence and argument with respect to the issues involved. Both the ~~department~~ prosecuting party and the law-enforcement officer may be represented by legal counsel. ~~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.~~

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

(e) The tribunal may take notice of judicially cognizable facts and in addition may take notice of general, ~~technical~~ technical, or scientific facts within its specialized knowledge. Parties ~~shall~~ must be notified beforehand of the materials so noticed by the ~~trial board. No tribunal.~~ A law-enforcement officer may not be adjudged guilty of any offense unless the ~~hearing~~ tribunal is satisfied that guilt has been established by substantial evidence.

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

§ 9209. Application of chapter.

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

Section 6. Amend Chapter 92, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9210. Community review board.

(a)(1) A municipal or county government may establish a community review board to review and provide oversight of the municipal or county government's law-enforcement agency.

(2) A community review board established under this subsection may do all of the following:

226 a. Obtain a law-enforcement disciplinary record under § 9200(c)(12)b. or (c)(12)c. of this title from the
227 municipal or county government's law-enforcement agency.

228 b. Gather statistics and data concerning allegations of misconduct by the municipal or county
229 government's law-enforcement officers.

230 c. Conduct performance reviews of investigations conducted under this chapter based on complaints of
231 misconduct by the municipal or county government's law-enforcement officers.

232 d. Issue public reports regarding trends in discipline of the municipal or county government's law-
233 enforcement officers. Data in a report must be de-identified to ensure confidentiality of information in a law-
234 enforcement disciplinary record obtained under § 9200(c)(12)c. of this title.

235 e. Review policies and procedures of the municipal or county government's law-enforcement agency and
236 make recommendations regarding law-enforcement policy and training to the highest-ranking officer of the law-
237 enforcement agency, the community review board under subsection (b) of this section, and the Council on Police
238 Training.

239 f. Request review by the community review board under subsection (b) of this section of a complaint of
240 misconduct that is not substantiated.

241 (3) A municipal or county government may establish the membership of the community review board.

242 (4) A municipal or county government should require members of the community review board to receive
243 training relevant to the municipal or county government's law-enforcement agency's operations and procedures.

244 (b)(1) A state-level community review board is established to review and provide oversight of a state, county, or
245 municipal law-enforcement agency in this State.

246 (2) A community review board established under this subsection may do all of the following:

247 a. Obtain a law-enforcement disciplinary record under § 9200(c)(12)b. or (c)(12)c. of this title from a
248 law-enforcement agency in this State.

249 b. Gather statistics and data concerning allegations of misconduct by law-enforcement officers in this
250 State.

251 c. Conduct performance reviews of investigations conducted under this chapter based on complaints of
252 misconduct by law-enforcement officers in this State.

253 d. Issue public reports regarding trends in discipline of law-enforcement officers in this State. Data in a
254 report must be de-identified to ensure confidentiality of information in a law-enforcement disciplinary record
255 obtained under § 9200(c)(12)c. of this title.

e. Review policies and procedures of each law-enforcement agency in this State and make recommendations regarding law-enforcement policy and training to the highest-ranking officer of the law-enforcement agency and the Council on Police Training.

f. Review a complaint of misconduct that is not substantiated and meets one of the following:

1. Is referred to the community review board under paragraph (a)(2)f. of this section.

2. Is selected for review by the community review board.

g. After a review under paragraph (b)(2)f. of this section, and based on a finding of clear and convincing evidence, provide the highest-ranking officer of the law-enforcement agency employing a law-enforcement officer who is the subject of the review with the board's findings and recommendations.

(3) A community review board established under this subsection is comprised of the following members:

a. One individual who is from a historically disadvantaged community that has traditionally experienced disparate policing or is a resident of public housing and who is not a current or former government elected officials, current candidate for public office, current or former employee of a law-enforcement agency, or an immediate family member of any of the preceding, appointed by the Speaker of the House of Representatives.

b. One individual who is from a historically disadvantaged community that has traditionally experienced disparate policing or is a resident of public housing and who is not a current or former government elected officials, current candidate for public office, current or former employee of a law-enforcement agency, or an immediate family member of any of the preceding, appointed by the President Pro Tempore of the Senate.

c. Two individuals from historically disadvantaged communities that have traditionally experienced disparate policing or are residents of public housing and who are not current or former government elected officials, current candidates for public office, current or former employees of a law-enforcement agency, or immediate family members of any of the preceding, appointed by the Governor.

d. One individual who is a resident of each county and who represents an organization that seeks racial or social justice on behalf of historically disadvantaged communities and is not a current or former government elected official, current candidate for public office, current or former employee of a law enforcement agency, or an immediate family member of any of the preceding, appointed by the County Administrator or County Executive, as applicable, for each county.

e. When the community review board reviews a complaint referred by a community review board established under subsection (a) of this section, a member from the community review board established under subsection (a) of this section becomes a member of the community review board under this subsection for

proceedings relevant to the investigation. The community review established under subsection (a) of this section selects the member.

(4) Except as provided under paragraph (b)(11)c. of this section, a member appointed to a community review board serves at the pleasure of the individual that appointed the member.

(5) A quorum of a community review board consists of a majority of the voting members of the board.

(6) A community review board may adopt rules to carry out the purpose and duties of the board.

(7) A community review board shall annually elect from the voting members of the board a chair and vice chair. The chair and vice chair shall guide the administration of the board by doing, at a minimum, all of the following:

a. Set the date, time, and place for meetings of the board.

b. Supervise the preparation and distribution of meeting notices, agendas, minutes, correspondence, and reports of the board.

c. Preside over meetings of the board.

d. Maintain order during a meeting of the board and decide all questions of order.

(8) The Department of Justice shall assign the following staff to each community review board:

a. A Deputy Attorney General to serve as counsel to the board.

b. An individual to be executive director of the board.

c. An individual to assist the board as needed.

(9)a. Except as provided under paragraph (b)(2)e. of this section, a member of a community review board may not disclose information contained in a law-enforcement disciplinary record obtained under § 9200(c)(12)c. of this title, obtained from a review and investigation under paragraph (b)(2)f. of this section, or contained in the board's findings and recommendations under paragraph (b)(2)g. of this section.

b. For purposes of § 1211 of this title, a member is a "public servant" and the disclosure of information in violation of paragraph (b)(9)a. of this section is an act constituting an unauthorized exercise of official functions.

c. If a community review board finds by a preponderance of the evidence that a member disclosed information in violation of paragraph (b)(9)a. of this section, the member is removed from the board.

(10)a. A member of a community review board shall receive training relevant to the performance of the member's duties under this subsection.

b. The Department of Justice shall establish the training necessary for a member of a community review board, including training related to all of the following:

315 1. The operations and procedures of the board, including the process of selecting for review and
316 reviewing a complaint of misconduct that is not substantiated.

317 2. The review and hearing process for a complaint of misconduct under this chapter.

318 3. Evaluating credibility.

319 4. Reaching findings.

320 5. Developing policy recommendations.

321 6. Law-enforcement training requirements, tactics, and policies, including the opportunity to ride
322 along with law-enforcement officers.

323 7. A member's confidentiality obligations under this subsection and the consequences of a violation
324 of the member's confidentiality obligations.

325 c. The Department of Justice shall provide the training required under paragraph (b)(10)b. of this section.

326 (11) The Department of Justice shall approve confidentiality standards for the community review board.

327 (12) When the community review board reviews under paragraph (b)(2)f. of this section a complaint of
328 misconduct that is not substantiated, the community review board shall conduct the review in an executive session
329 closed to the public.

330 (13) When the community review board reviews under paragraph (b)(2)f. of this section a complaint of
331 misconduct that is not substantiated, the law-enforcement agency employing the law-enforcement officer who is the
332 subject of the complaint shall provide the officer's law-enforcement disciplinary record related to the complaint
333 without the redactions required under § 9200(c)(12)c. of this title.

334 (14)a. A record created by the community review board as part of the board's review under paragraph (b)(2)f.
335 of this section is not a public record for purposes of Chapter 100 of Title 29.

336 b. A record created by the community review board as part of the board's review under paragraph (b)(2)f.
337 of this section may only be disclosed as follows:

338 1. As required under paragraph (b)(2)g. of this section.

339 2. As required under other law of this State.

340 (c) Notwithstanding any other provision of this section, a community review board shall maintain the
341 confidentiality and privileges under Chapter 94 of this title.

342 (d) A member of a community review board is entitled to the same rights and privileges set forth under §§ 3925
343 and 4002 of Title 10.

344 Section 7. If any provision of this Act or the application of this Act to any person or circumstance is held invalid,
345 the provisions of this Act are severable if the invalidity does not affect the other provisions of this Act that can be given
346 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 the media or the public.

This information is tremendously important. Law-enforcement officers are pillars of their community and often the most significant witnesses in criminal trials, where defendants can sometimes face the rest of their lives in prison. This Act would ensure that the public will have access to all serious and substantiated records of law-enforcement misconduct making our criminal justice system fairer and improving trust within our community. 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 adds affirmative language to LEOBOR that serious and substantiated 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 by enabling the creation and operation of effective community review boards at the State, county, and municipal level. These boards are critical to increasing public trust in the criminal justice system.

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

Author: Senator Lockman