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**SFA**



**BILL ANALYSIS**

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Senate Bill 168 (as introduced 1-28-99)  
Sponsor: Senator Christopher D. Dingell  
Committee: Judiciary

Date Completed: 9-27-00

## **CONTENT**

**The bill would create the "Law Enforcement Officers' Bill of Rights Act" to do all of the following:**

- Specify conditions that would apply if a law enforcement officer were subject to a noncriminal investigation that could lead to disciplinary action.
- Impose certain requirements and restrictions on a law enforcement agency in regard to taking disciplinary action against a law enforcement officer.
- Place certain restrictions on the filing of charges against a law enforcement officer.
- Outline procedures for a disciplinary hearing against a law enforcement officer.
- Specify conditions and procedures for imposing disciplinary action against a law enforcement officer.
- Allow a law enforcement officer to appeal a final determination.
- Specify an officer's rights pertaining to an internal investigation, a disciplinary hearing, and disciplinary action.
- Allow a law enforcement agency to issue a summary punishment or suspend an officer.
- Prohibit a law enforcement agency from restricting an officer's political activity while the officer was off duty.

The bill would define "law enforcement officer" as an employee of a State, county, township, city, or village law enforcement agency who had taken an oath of office and whose duties were to enforce criminal laws. "Law enforcement agency" would mean a State, county, township, city, or village public agency that was charged with the duty of preventing crime and detecting and arresting people for violations of criminal law.

### **Scope of the Act**

The bill would not apply to a criminal investigation of a law enforcement officer's conduct or a nondisciplinary investigation concerning the job performance activities of a law enforcement officer.

The bill would not affect a collective bargaining agreement between a law enforcement agency and an officer's bargaining unit that was in effect on the bill's effective date.

### **Investigation**

If a law enforcement officer were under investigation that could lead to disciplinary action, all of the following would apply:

- The law enforcement agency conducting the investigation would have to notify the officer of the investigation before questioning him or her. The notice would have to identify the nature and scope of the investigation, as well as all violations of law, rules, regulations, or procedures for which reasonable suspicion existed.
- If the complaint were made by a person from outside the agency, the complaint could not be investigated unless the complainant signed a detailed statement. The complaint would have to be investigated within 15 days from the date of receipt.
- The individual in charge of the investigation would have to notify the law enforcement officer under investigation of the results of the investigation and whether any recommendations for disciplinary action were made.

"Disciplinary action" would mean a sanction or punishment imposed on a law enforcement officer for conduct that violated a statute, ordinance, published administrative rule, regulation, or procedure.

An officer would be entitled to counsel or a person of his or her choice during questioning. The officer could consent in writing to questioning without counsel. An officer who was under investigation for conduct that could lead to disciplinary action could be questioned only under the following conditions:

- At a reasonable hour and while the officer was on duty, unless exigent circumstances existed.
- At the place where the officer reported to duty,

unless the officer consented in writing to another place.

- The officer was told the name, rank, and position of the individual who would question him or her before the questioning began.
- The officer was questioned by only one individual at a time during the questioning period.
- The officer was told the nature of the investigation before being questioned.
- The officer was questioned only for a reasonable period of time and was given time for rest and physical bodily functions.
- The person questioning the officer did not threaten or make a promise to induce an answer to a question.
- The questioning was fully transcribed or fully recorded electronically, by audiotape or audio-videotape, and a copy of the transcription or recording was given to the officer within a reasonable time.

#### Disciplinary Action

If an internal investigation of a law enforcement officer resulted in a recommendation for disciplinary action, the law enforcement agency making the recommendation would have to notify the officer of the right to a hearing before a hearing officer or board as determined by the agency. "Internal investigation" would mean an inquiry into work-related activity of a law enforcement officer by one or more law enforcement agency investigators to determine whether the officer violated an agency rule, order, or procedure.

An agency could not take disciplinary action before holding a hearing. A law enforcement agency could take disciplinary action against a law enforcement officer only after a hearing officer or board found that the officer violated a statute, ordinance, published administrative rule, regulation, or procedure.

If, after a hearing, a hearing board or officer determined that a law enforcement officer was not responsible for a violation of a statute, ordinance, published administrative rule, regulation, or procedure, the agency could not take disciplinary action against that officer. If a hearing board or officer determined that a law enforcement officer was responsible for a violation, the hearing board or hearing officer would have to recommend, in writing, the punishment to be imposed.

#### Charges

Charges against a law enforcement officer could not be filed more than 90 days after the beginning of a

disciplinary investigation. At least 30 days before charges were filed against an officer, a law enforcement agency would have to give the officer actual written notice of all of the following:

- The name and mailing address of the hearing officer or board assigned to conduct the disciplinary hearing.
- The name, rank, and command of the advocate for the law enforcement agency, if the advocate were a law enforcement officer.
- The name and mailing address of the advocate for the law enforcement agency, if that advocate were not a law enforcement officer.

"Disciplinary hearing" would mean a forum in which allegations of misconduct were heard and evidence relevant to the misconduct was presented. "Advocate" would mean an individual who prosecuted or defended charges against a law enforcement officer at a disciplinary hearing.

#### Disciplinary Hearing

A law enforcement officer would be entitled to have an attorney or a person of his or her choice represent him or her at a disciplinary hearing.

The law enforcement agency would have to determine the composition of the disciplinary hearing board and the procedures for its conduct. If the hearing board were composed of more than one law enforcement officer, one of the board members would have to be of the same rank as that of the law enforcement officer who was the subject of the hearing.

An agency would have to make all of the following available to the officer at least 15 days before the hearing:

- Evidence that was intended to be used against an officer.
- The name of each witness to be called by the agency to testify against the officer.
- A copy of any investigative report, except for information received from confidential informants who provided information under an agreement of confidentiality.

A law enforcement agency could not compel an officer under a disciplinary investigation to disclose items of personal property or provide information about personal income, assets, or debts or those of the law enforcement officer's family unless either of the following conditions was met:

- The information was necessary to the

investigation of an alleged violation of a Federal or State law or an alleged violation of an ordinance of a political subdivision of the State.

- Disclosure was required by a Federal or State law or by an ordinance of a political subdivision of the State.

A hearing board or hearing officer would be authorized to issue a summons to compel the appearance of a witness on behalf of a law enforcement officer. A hearing board or hearing officer could petition the circuit court to compel appearance before the board or hearing officer.

A disciplinary hearing would not be open to the public unless the officer who was the subject of the hearing requested, in writing, that the hearing be open to the public or open only to certain individuals. A law enforcement agency conducting a disciplinary hearing would have to do at least all of the following:

- Fully transcribe the hearing or fully record it on audiotape or audio-videotape.
- Sequester witnesses throughout the hearing if requested by the officer who was the subject of the hearing.
- Require a witness to take an oath or make an affirmation before testifying and advise the witness that he or she would be subject to penalties for perjury for knowingly testifying falsely.

After the disciplinary hearing was completed, the hearing board or hearing officer would have to render a decision on each charge. If a charge were based on fraud, false representation, dishonesty, deceit, or criminal behavior, the hearing board or hearing officer would have to make a determination on the basis of clear and convincing evidence. If a charge were based on any other behavior, the hearing board or officer would have to make a determination on the basis of a preponderance of the evidence.

#### Appeal

A law enforcement officer could appeal a final determination of a law enforcement agency in the circuit court in the county in which the agency was located. If the agency were an agency of the State, the action would have to be filed in the circuit court in the county in which the officer reported for duty.

#### Officers' Rights

A law enforcement officer could not waive a right conferred upon him or her under the bill unless the waiver was expressly authorized by the bill. A law enforcement agency could not retaliate against an officer for exercising a right granted under the bill. The bill would not impair or alter a right or remedy

that an officer had under any other law, rule, or pertinent collective bargaining agreement.

A law enforcement officer could file an action in the circuit court for an order or injunction to prevent a law enforcement agency from violating the bill. If the officer prevailed in that action, he or she could recover compensatory damages and reasonable attorney fees.

If a law enforcement agency placed adverse material in a law enforcement officer's personnel file or had possession of or control over adverse material about an officer, the agency would have to give the officer an opportunity to review the material and provide a written comment on it.

The provisions of the bill would be in addition to, and would not affect, any other right provided by law.

#### Summary Punishment or Suspension

The bill specifies that a law enforcement agency could administer summary punishment or temporarily suspend a law enforcement officer from duty in an emergency situation, to protect the safety of the officer or the safety of the public. If an officer were temporarily suspended, employment benefits could not be altered during the temporary suspension.

"Summary punishment" would mean a sanction, without a hearing, imposed on a law enforcement officer by a superior authority within a law enforcement agency for a violation of one or more of the agency's rules, orders, or procedures. "Summary punishment" would not include a termination of employment, suspension, demotion, transfer, or a reduction in pay or a loss of any other financial employment benefit.

#### Political Activity

A law enforcement agency could not prohibit an officer from engaging in or refraining from political activity during any period in which the officer was off duty or not acting in an official capacity. This prohibition would not apply to the head of a law enforcement agency who served at the pleasure of the chief executive of the State or a political subdivision of the State.

Legislative Analyst: P. Affholter

#### FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: B. Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.