

House _____ Amendment NO. _____

Offered By _____

1 AMEND Senate Substitute for Senate Committee Substitute for Senate Bill No. 57, Page 3, Section
2 590.1922, Line 66, by inserting after said section and line the following:

3
4 "590.502. 1. For purposes of this section, the following shall mean:

5 (1) "Administering authority", any individual or body authorized by a law enforcement
6 agency to hear and make final decisions regarding appeals of disciplinary actions issued by such
7 agency;

8 (2) "Color of law", any act by a law enforcement officer, whether on duty or off duty, that is
9 performed in furtherance of his or her sworn duty to enforce laws and to protect and serve the
10 public;

11 (3) "Economic loss", any economic loss including, but not limited to, loss of overtime
12 accrual, overtime income, sick time accrual, sick time, secondary employment income, holiday pay,
13 and vacation pay;

14 (4) "Good cause", sufficient evidence or facts that would support a party's request for
15 extensions of time or any other requests seeking accommodations outside the scope of the rules set
16 out herein;

17 (5) "Law enforcement officer", any commissioned peace officer with the power to arrest for
18 a violation of the criminal code who is employed by any unit of the state or any county, charter
19 county, city, charter city, municipality, district, college, university, or any other political subdivision
20 or is employed by the board of police commissioners as defined in chapter 84. "Law enforcement
21 officer" shall not include any officer who is the highest ranking officer in the law enforcement
22 agency.

23 2. Whenever a law enforcement officer is under administrative investigation or is subjected
24 to administrative questioning that the officer reasonably believes could lead to disciplinary action,
25 demotion, dismissal, transfer, or placement on a status that could lead to economic loss, the
26 investigation or questioning shall be conducted under the following conditions:

27 (1) The law enforcement officer who is the subject of the investigation shall be informed, in
28 writing, of the existence and nature of the alleged violation and the individuals who will be
29 conducting the investigation. Notice shall be provided to the officer along with a copy of the
30 complaint at least twenty-four hours prior to any interrogation or interview of the officer;

31 (2) Any person, including members of the same agency or department as the officer under
32 investigation, filing a complaint against a law enforcement officer shall have the complaint
33 supported by a written statement outlining the complaint that includes the personal identifying
34 information of the person filing the complaint. All personal identifying information shall be held
35 confidential by the investigating agency;

36 (3) When a law enforcement officer is questioned or interviewed regarding matters

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1 pertaining to his or her law enforcement duties or actions taken within the scope of his or her
2 employment, such questioning shall be conducted for a reasonable length of time and only while the
3 officer is on duty unless reasonable circumstances exist that necessitate questioning the officer while
4 he or she is off duty;

5 (4) Any interviews or questioning shall be conducted at a secure location at the agency that
6 is conducting the investigation or at the place where the officer reports to work, unless the officer
7 consents to another location;

8 (5) Law enforcement officers shall be questioned by up to two investigators and shall be
9 informed of the name, rank, and command of the investigator or investigators conducting the
10 investigation; except that, separate investigators shall be assigned to investigate alleged department
11 policy violations and alleged criminal violations;

12 (6) Interview sessions shall be for a reasonable period of time. There shall be times provided
13 for the officer to allow for such personal necessities and rest periods as are reasonably necessary;

14 (7) Prior to an interview session, the investigator or investigators conducting the
15 investigation shall advise the law enforcement officer of the rule set out in *Garrity v. New Jersey*,
16 385 U.S. 493 (1967), specifically that the law enforcement officer is being ordered to answer
17 questions under threat of disciplinary action and that the officer's answers to the questions will not
18 be used against the officer in criminal proceedings;

19 (8) Law enforcement officers shall not be threatened, harassed, or promised rewards to
20 induce them into answering any question; except that, law enforcement officers may be compelled
21 by their employer to give protected *Garrity* statements to an investigator under the direct control of
22 the employer, but such compelled statements shall not be used or derivatively used against the
23 officer in any aspect of a criminal case brought against the officer;

24 (9) Law enforcement officers under investigation are entitled to have an attorney or any
25 duly authorized representative present during any questioning that the law enforcement officer
26 reasonably believes may result in disciplinary action. The attorney or representative shall be
27 permitted to confer with the officer but shall not unduly disrupt or interfere with the interview. The
28 questioning shall be suspended for a period of up to twenty-four hours if the officer requests
29 representation;

30 (10) Prior to the law enforcement officer being interviewed, the officer and his or her
31 attorney or representative shall have the opportunity to review the complaint;

32 (11) The law enforcement agency conducting the investigation shall have ninety days from
33 receipt of a citizen complaint to complete such investigation. The agency shall determine the
34 disposition of the complaint and render a disciplinary decision, if any, within ninety days. The
35 agency may, for good cause, petition the administering authority overseeing the administration of
36 discipline for an extension of time to complete the investigation. If the administering authority finds
37 the agency has shown good cause for the granting of an extension of time to complete the
38 investigation, the administering authority shall grant an extension of up to sixty days. The agency is
39 limited to two extensions per investigation; except that, if there is an ongoing criminal investigation
40 there shall be no limitation on the amount of sixty-day extensions. For good cause shown, the
41 internal investigation may be tolled until the conclusion of a concurrent criminal investigation
42 arising out of the same alleged conduct. Absent consent from the officer being investigated, the
43 administering authority overseeing the administration of discipline shall set the matter for hearing
44 and shall provide notice of the hearing to the law enforcement officer under investigation. The
45 officer shall have the right to attend the hearing and to present evidence and arguments against
46 extension;

47 (12) Within five days of the conclusion of the administrative investigation, the investigator
48 shall inform the officer, in writing, of the investigative findings and any recommendation for further
49 action, including discipline;

1 (13) A complete record of the administrative investigation shall be kept by the law
2 enforcement agency conducting such investigation. Upon completion of the investigation, a copy of
3 the entire record, including, but not limited to, audio, video, and transcribed statements, shall be
4 provided to the officer or the officer's representative within five business days of the officer's written
5 request. The agency may request a protective order to redact all personal identifying witness
6 information; and

7 (14) All records compiled as a result of any investigation subject to the provisions of this
8 section shall be held confidential and shall not be subject to disclosure under chapter 610, except by
9 lawful subpoena or court order, by release approved by the officer, or as provided in section
10 590.070.

11 3. Law enforcement officers who are suspended without pay, demoted, terminated,
12 transferred, or placed on a status resulting in economic loss shall be entitled to a full due process
13 hearing. However, nothing in this section shall prohibit a law enforcement agency and the
14 authorized bargaining representative for a law enforcement officer employed by that agency from
15 reaching written agreements providing disciplinary procedures more favorable than those provided
16 for this section. The components of the hearing shall include, at a minimum:

17 (1) The right to be represented by an attorney or other individual of their choice during the
18 hearing;

19 (2) Seven days' notice of the hearing date and time;

20 (3) An opportunity to access and review documents, at least seven days in advance of the
21 hearing, that are in the employer's possession and that were used as a basis for the disciplinary
22 action;

23 (4) The right to refuse to testify at the hearing if the officer is concurrently facing criminal
24 charges in connection with the same incident. A law enforcement officer's decision not to testify
25 shall not result in additional internal charges or discipline;

26 (5) A complete record of the hearing shall be kept by the agency for purposes of appeal.
27 The record shall be provided to the officer or his or her attorney upon written request;

28 (6) The entire record of the hearing shall remain confidential and shall not be subject to
29 disclosure under chapter 610, except by lawful subpoena or court order.

30 4. Any decision, order, or action taken following the hearing shall be in writing and shall be
31 accompanied by findings of fact. The findings shall consist of a concise statement upon each issue
32 in the case. A copy of the decision or order accompanying findings and conclusions along with the
33 written action and right of appeal, if any, shall be delivered or mailed promptly to the law
34 enforcement officer or to the officer's attorney or representative of record.

35 5. Law enforcement officers shall have the opportunity to provide a written response to any
36 adverse materials placed in their personnel file, and such written response shall be permanently
37 attached to the adverse material.

38 6. Law enforcement officers shall have the right to compensation for any economic loss
39 incurred during an investigation if the officer is found to have committed no misconduct.

40 7. Employers shall defend and indemnify law enforcement officers from and against civil
41 claims made against them in their official and individual capacities if the alleged conduct arose in
42 the course and scope of their obligations and duties as law enforcement officers. This includes any
43 actions taken off duty if such actions were taken under color of law. In the event the law
44 enforcement officer is convicted of, or pleads guilty to, criminal charges arising out of the same
45 conduct, the employer shall no longer be obligated to defend and indemnify the officer in
46 connection with related civil claims.

47 8. Law enforcement officers shall not be disciplined, demoted, dismissed, transferred, or
48 placed on a status resulting in economic loss as a result of the assertion of their constitutional rights
49 in any judicial proceeding, unless the officer admits to wrong-doing, in which case the provisions of

1 this section shall not apply.

2 9. Any aggrieved law enforcement officer or authorized representative may seek judicial
3 enforcement of the requirements of this section. Suits to enforce this section shall be brought in the
4 circuit court for the county in which the law enforcement agency or governmental body has its
5 principal place of business.

6 10. Upon a finding by a preponderance of the evidence that a law enforcement agency,
7 governmental body, or member of same has violated any provision of this section, a court shall void
8 any action taken in violation of this section. The court may also award the law enforcement officer
9 the costs of bringing the suit including, but not limited to, attorneys' fees. A lawsuit for enforcement
10 shall be brought within one year from which the violation is ascertainable.

11 11. Nothing in this section apply to any investigation or other action action by the director
12 regarding a license issued by the director under this chapter.

13 12. A law enforcement agency that has substantially similar or greater procedures shall be
14 deemed in compliance with this section."; and

15
16 Further amend said bill by amending the title, enacting clause, and intersectional references
17 accordingly.