

SECOND REGULAR SESSION

HOUSE BILL NO. 3045

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE IRWIN.

6782H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 590.502, RSMo, and to enact in lieu thereof one new section relating to administrative investigation of law enforcement officers.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 590.502, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 590.502, to read as follows:

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

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

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

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

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

(5) **"Law enforcement agency", any agency authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of federal, state, or municipal law. A "law enforcement agency" may be an agency or unit of the state or any county, charter county, city,**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 **charter city, municipality, district, college, university, or any other political subdivision**
19 **or board of police commissioners;**

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

26 2. Whenever a law enforcement officer is under administrative investigation or is
27 subjected to administrative questioning that the officer reasonably believes could lead to
28 disciplinary action, demotion, dismissal, transfer **leading to an economic loss**, or placement
29 on a status that could lead to economic loss, the investigation or questioning shall be
30 conducted under the following conditions:

31 (1) The law enforcement officer who is the subject of the investigation shall be
32 informed, in writing, of the existence [~~and nature of the alleged violation~~] **of such**
33 **investigation, the specific rules or provisions of policy allegedly violated**, and the
34 individuals who will be conducting the investigation. Notice shall be provided to the officer
35 along with a **complete and unredacted** copy of the complaint at least twenty-four hours prior
36 to any interrogation or interview of the officer;

37 (2) Any person, including members of the same agency or department as the officer
38 under investigation, filing a complaint against a law enforcement officer shall have the
39 complaint supported by a written statement outlining the complaint that includes the personal
40 identifying information of the person filing the complaint. **The person filing the complaint**
41 **shall be considered the complainant and shall be identified by the agency as such.** All
42 personal identifying information shall be held confidential by the investigating agency,
43 **except as to the identity of the official under investigation. If the complainant refuses to**
44 **be identified in the complaint, the agency shall refuse to take and investigate the**
45 **complaint;**

46 (3) When a law enforcement officer is questioned or interviewed regarding matters
47 pertaining to his or her law enforcement duties or actions taken within the scope of his or her
48 employment, such questioning shall be conducted for a reasonable length of time and only
49 while the officer is on duty unless reasonable circumstances exist that necessitate questioning
50 the officer while he or she is off duty;

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

54 (5) Law enforcement officers shall be questioned by up to two [~~investigators~~]
55 **commissioned personnel of the agency investigating the officer** and shall be informed of
56 the name, rank, and command of the investigator or investigators conducting the
57 investigation; except that, separate investigators shall be assigned to investigate alleged
58 department policy violations and alleged criminal violations;

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

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

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

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

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

80 (11) The law enforcement agency conducting the investigation shall have ninety days
81 from receipt of a [~~citizen~~] complaint to complete such investigation. **The date the complaint**
82 **was received shall be stated in the complaint.** The agency shall determine the disposition
83 of the complaint and render a disciplinary decision, if any, within ninety days. The agency
84 may, for good cause, petition the administering authority overseeing the administration of
85 discipline for an extension of time to complete the investigation. If the administering
86 authority finds the agency has shown good cause for the granting of an extension of time to
87 complete the investigation, the administering authority shall grant an extension of up to sixty
88 days. The agency is limited to two extensions per investigation; except that, if there is an
89 ongoing criminal investigation there shall be no limitation on the amount of sixty-day
90 extensions. For good cause shown, the internal investigation may be tolled until the

91 conclusion of a concurrent criminal investigation arising out of the same alleged conduct.
92 Absent consent from the officer being investigated, the administering authority overseeing the
93 administration of discipline shall set the matter for hearing and shall provide notice of the
94 hearing to the law enforcement officer under investigation. The officer shall have the right to
95 attend the hearing and to present evidence and arguments against extension;

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

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

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

109 3. ~~[Law enforcement officers who are]~~ **Before a law enforcement officer is**
110 **suspended without pay, demoted, terminated, transferred resulting in economic loss, or**
111 **placed on a status resulting in economic loss, the officer shall be entitled to a full due process**
112 **hearing. The hearing shall be conducted by a neutral person or body that did not**
113 **participate in or have knowledge of the investigation and recommended discipline. The**
114 **officer shall have ten days from the date written notice of the recommended disciplinary**
115 **action is given to the officer to request a hearing. If no such request is made, the**
116 **recommended disciplinary action shall be final.**

117 ~~[However,]~~ 4. Nothing in this section shall prohibit a law enforcement agency and the
118 authorized bargaining representative for a law enforcement officer employed by that agency
119 from reaching written agreements providing disciplinary procedures more favorable than
120 those provided for this section. The components of the hearing shall include, at a minimum:

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

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

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

127 (4) **The right to testify, to present witnesses and evidence, and to cross examine**
128 **witnesses;**

129 (5) **During the hearing, the law enforcement agency shall be considered the party**
130 **bearing the burden of proof and shall present evidence to establish the alleged violation**
131 **of rules or policy and shall otherwise present its case in chief first;**

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

135 ~~[(5)]~~ (7) A complete record of the hearing shall be kept by the agency for purposes of
136 appeal. The record shall be provided to the officer or his or her attorney upon written request;

137 ~~[(6)]~~ (8) The entire **hearing shall be a closed proceeding and the** record of the
138 hearing shall remain confidential and shall not be subject to disclosure under chapter 610,
139 except by lawful subpoena or court order.

140 ~~[4-]~~ 5. Any decision, order, or action taken following the hearing shall be **considered**
141 **a final decision and shall be** in writing and ~~[shall be]~~ accompanied by findings of fact. The
142 findings shall consist of a concise statement upon each issue in the case. A copy of the
143 decision or order accompanying findings and conclusions along with the written action and
144 right of appeal, if any, shall be delivered or mailed promptly to the law enforcement officer or
145 to the officer's attorney or representative of record. **Law enforcement officers shall have**
146 **the right to appeal the final decision to the proper circuit court as provided under**
147 **chapter 536.**

148 ~~[5-]~~ 6. Law enforcement officers shall have the opportunity to provide a written
149 response to any adverse materials placed in their personnel file, and such written response
150 shall be permanently attached to the adverse material.

151 ~~[6-]~~ 7. Law enforcement officers shall have the right to compensation for any
152 economic loss incurred during an investigation if the officer is found to have committed no
153 misconduct.

154 ~~[7-]~~ 8. Employers shall defend and indemnify law enforcement officers from and
155 against civil claims made against them in their official and individual capacities if the alleged
156 conduct arose in the course and scope of their obligations and duties as law enforcement
157 officers. This includes any actions taken off duty if such actions were taken under color of
158 law. In the event the law enforcement officer is convicted of, or pleads guilty to, criminal
159 charges arising out of the same conduct, the employer shall no longer be obligated to defend
160 and indemnify the officer in connection with related civil claims.

161 ~~[8-]~~ 9. Law enforcement officers shall not be disciplined, demoted, dismissed,
162 transferred, or placed on a status resulting in economic loss as a result of the assertion of their

163 constitutional rights in any judicial proceeding, unless the officer admits to wrongdoing, in
164 which case the provisions of this section shall not apply.

165 ~~[9-]~~ **10.** Any aggrieved law enforcement officer or authorized representative may
166 ~~[seek judicial enforcement of the requirements of]~~ **bring suit under** this section. Suits ~~[to~~
167 ~~enforce]~~ **brought under** this section shall be brought in the circuit court for the county in
168 which the law enforcement agency or governmental body has its principal place of business.

169 ~~[10-]~~ **11.** Upon a finding by a preponderance of the evidence that a law enforcement
170 agency, governmental body, or member of same has violated any provision of this section, a
171 court shall void any **disciplinary** action taken ~~[in]~~ **following the** violation of this section **and**
172 **shall order the officer to be made whole and returned to the position occupied as if the**
173 **disciplinary action had never been imposed.** The court may also award the law
174 enforcement officer the costs of bringing the suit including, but not limited to, attorneys' fees.
175 A lawsuit for enforcement shall be brought within ~~[one year]~~ **three years** from ~~[which the~~
176 ~~violation is ascertainable]~~ **the date the officer is given written notice of the final decision.**

177 ~~[11-]~~ **12.** Nothing in this section shall apply to any investigation or other action by the
178 director regarding a license issued by the director under this chapter.

179 ~~[12-]~~ **13.** A law enforcement agency that has substantially similar or greater
180 procedures shall be deemed in compliance with this section.

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