

House _____ Amendment NO. _____

Offered By

1 AMEND House Substitute for House Committee Substitute for Senate Substitute for Senate
2 Committee Substitute for Senate Bill No. 289, Page 7, Section 590.030, Line 40, by inserting after
3 said section and line the following:
4

5 "590.502. 1. For purposes of this section, the following shall mean:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (11) Law enforcement officers or their designated representative shall have the right to bring
34 their own recording device and may record all aspects of the interview;

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

1 extension;

2 (13) Within five days of the conclusion of the administrative investigation, the investigator
3 shall inform the officer, in writing, of the investigative findings and any recommendation for further
4 action, including discipline;

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

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

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

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

23 (2) The right of the law enforcement officer or his or her attorney to conduct discovery prior
24 to the hearing. Depositions may be taken in the same manner and under the same conditions as
25 provided for in the Missouri civil rules of civil procedure for civil cases in the circuit court.
26 Subpoenas may be issued by the board conducting the hearing or by the circuit court or the office of
27 the clerk for the county where the agency has its principal place of business;

28 (3) Seven days' notice of the hearing date and time;

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

32 (5) The right of the law enforcement officer or his or her attorney to present witnesses and
33 evidence in the officer's defense and a right to cross-examine any adverse witnesses against the
34 officer;

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

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

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

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

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

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

3 7. Law enforcement officers may petition the circuit court in the county in which the law
4 enforcement agency has its principal place of business to review the decision of the administrative
5 body hearing the appeal of discipline. Upon a finding that the discipline was not justified, the
6 circuit court may award the law enforcement officer back pay and costs incurred in bringing the suit,
7 including attorney's fees.

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

15 9. Law enforcement officers shall not be disciplined, demoted, dismissed, transferred, or
16 placed on a status resulting in economic loss as a result of the assertion of their constitutional rights
17 in any judicial proceeding, unless the officer admits to wrong-doing, in which case the provisions of
18 this section shall not apply.

19 10. No state or local governmental unit including, but not limited to, a county, charter
20 county, city, charter city, municipality, district, college, university, or any other political subdivision
21 that employs a law enforcement officer shall enact, promulgate, enforce, or follow any law,
22 regulation, or policy that would abolish, conflict with, modify, or in any way diminish any right or
23 remedy provided to law enforcement officers under this section.

24 11. The rights set out in this section are minimum standards to be applied throughout the
25 state. However, nothing in this section shall prohibit a law enforcement agency and the authorized
26 bargaining representative for a law enforcement officer employed by that agency from reaching
27 written agreements providing disciplinary procedures more favorable than those provided in this
28 section.

29 12. Any aggrieved law enforcement officer or authorized representative may seek judicial
30 enforcement of the requirements of this section. Suits to enforce this section shall be brought in the
31 circuit court for the county in which the law enforcement agency or governmental body has its
32 principal place of business.

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

38 14. Nothing in this section shall apply to any investigation or other action by the director
39 regarding a license issued by the director under this chapter.

40 15. A law enforcement agency that has substantially similar or greater procedures shall be
41 deemed in compliance with this section."; and

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43 Further amend said bill by amending the title, enacting clause, and intersectional references
44 accordingly.