

FIRST REGULAR SESSION

HOUSE BILL NO. 499

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SCHROER.

1181H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 590.500, RSMo, and to enact in lieu thereof one new section relating to law enforcement officer disciplinary actions, with penalty provisions.

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

Section A. Section 590.500, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 590.500, to read as follows:

590.500. 1. ~~[Any law enforcement officer, other than an elected sheriff or deputy, who possesses the duty and power of arrest for violations of the criminal laws of this state or for violations of ordinances of counties or municipalities of this state, who is regularly employed for more than thirty hours per week, and who is employed by a law enforcement agency of this state or political subdivision of this state which employs more than fifteen law enforcement officers, shall be given upon written request a meeting within forty-eight hours of a dismissal, disciplinary demotion or suspension that results in a reduction or withholding of salary or compensatory time. The meeting shall be held before any individual or board as designated by the governing body. At any such meeting, the employing law enforcement agency shall at a minimum provide a brief statement, which may be oral, of the reason of the discharge, disciplinary demotion or suspension, and permit the law enforcement officer the opportunity to respond. The results from such meeting shall be reduced to writing.]~~ **The provisions of this section shall be known and may be cited as the "Law Enforcement Officers' Bill of Rights"**. Any law enforcement agency that has substantially similar or greater procedures shall be deemed to be in compliance with this section. ~~[This section shall not apply to an officer serving in a probationary period or to the highest ranking officer of any law enforcement agency.]~~

2. **For purposes of this section, the following terms mean:**

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

21 (2) "Economic loss", includes, but is not limited to, loss of overtime accrual,
22 overtime income, sick time accrual, sick time, secondary employment income, holiday pay,
23 and vacation pay;

24 (3) "Law enforcement officer", any sworn peace officer, other than an elected
25 sheriff or deputy, who possesses the duty and power of arrest for violations of the criminal
26 laws of this state or for violations of ordinances of counties or municipalities of this state.
27 The provisions of this section shall not apply to an officer serving in a probationary period
28 or to the highest ranking officer of any law enforcement agency.

29 3. Whenever a law enforcement officer is under investigation or is subjected to
30 questioning, for any reason, that could lead to disciplinary action, demotion, dismissal,
31 transfer, or placement on a status that could lead to economic loss, the investigation or
32 questioning shall be conducted under the following conditions:

33 (1) The law enforcement officer who is the subject of the investigation shall be
34 informed, in writing, of the existence and nature of the alleged violation and the individual
35 who will be conducting the investigation. Notice shall be provided to the officer at least
36 forty-eight hours prior to any interrogation or interview of the officer;

37 (2) Anyone filing a complaint against a law enforcement officer, including members
38 of the same agency or department as the officer subject to the complaint, shall have the
39 complaint supported by a sworn affidavit. Any complaint having been supported by a
40 sworn affidavit and having been found to contain knowingly false material information,
41 in total or in part, shall be presented to the appropriate prosecuting attorney or circuit
42 attorney for a determination of prosecution;

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

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

51 (5) Law enforcement officers shall be questioned by a single investigator and shall
52 be informed of the name, rank, and command of the officer conducting the investigation;

53 except that, separate investigators shall be assigned to investigate alleged department
54 policy violations and alleged criminal violations;

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

58 (7) Law enforcement officers shall not be threatened, harassed, or promised
59 rewards to induce them into answering any question; except that, law enforcement officers
60 may be compelled by their employer to give protected statements to an investigator under
61 the direct control of the employer, but such compelled statements shall not be used or
62 derivatively used against the officer in any aspect of a criminal case brought against the
63 officer without the officer's express written consent;

64 (8) Law enforcement officers under investigation are entitled to have an attorney
65 or any other individual of their choice present during any questioning that the law
66 enforcement officer reasonably believes may result in disciplinary action. The questioning
67 shall be suspended for a period of up to forty-eight hours if the officer requests
68 representation;

69 (9) Prior to being interviewed, the officer and his or her representative shall have
70 the opportunity to review any audio or video in possession of the department conducting
71 the investigation;

72 (10) The department conducting the investigation shall have ninety days from
73 receipt of a citizen complaint, or from the internal initiation of the investigation by another
74 member of the department, to complete the investigation. The department shall determine
75 the disposition of the complaint and render a decision on discipline, if any, within the
76 ninety-day time frame. The department may, for good cause, petition the board overseeing
77 the administration of discipline for an extension of time to complete the investigation.
78 Absent consent from the officer being investigated, the board overseeing the administration
79 of discipline shall set the matter for hearing and provide notice of the hearing to the law
80 enforcement officer under investigation. The officer shall have the right to attend the
81 hearing and to present evidence and arguments against extension. If the board finds the
82 department has shown good cause for granting an extension of time to complete the
83 investigation, the board shall grant an extension of up to sixty days. The department shall
84 be limited to one such extension per investigation;

85 (11) Within five days of the conclusion of the administrative investigation, the
86 investigator shall inform the officer in writing of the investigative findings and any
87 recommendation for further action, including discipline;

88 (12) A complete record of the administrative investigation shall be kept by the law
89 enforcement agency conducting such investigation. Upon completion of the investigation,
90 a copy of the entire record including, but not limited to, audio, video, or transcribed
91 statements, shall be provided to the officer or the officer's representative within forty-eight
92 hours of the officer's written request; and

93 (13) All records compiled as a result of any investigation subject to the provisions
94 of this section shall be held confidential and not be released to the public at any time.

95 4. Law enforcement officers who are suspended without pay, demoted, terminated,
96 transferred, or placed on a status resulting in economic loss shall be entitled to a full due
97 process hearing. The components of the hearing shall include, at a minimum:

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

100 (2) Fourteen days' advance notification of the hearing date and time;

101 (3) An opportunity to access and review the complete record including, but not
102 limited to, all documents, video, and audio or transcribed statements, whether obtained by
103 the employer before or after the completion of the investigation, at least ten days in
104 advance of the hearing;

105 (4) An opportunity to present witnesses and evidence and a right to cross-examine
106 any adverse witness;

107 (5) The right to refuse to testify at the hearing if the officer is concurrently facing
108 criminal charges in connection with the same incident. The election not to testify shall not
109 result in additional internal charges or discipline;

110 (6) A complete record of the hearing to be kept by the agency for purposes of
111 appeal. The record shall be provided to the officer or his or her attorney upon written
112 request; and

113 (7) The entire record of the hearing to be kept confidential, and remain
114 confidential, and not released to the public.

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116 If a contractual disciplinary grievance procedure executed by and between the agency and
117 the bargaining unit of that officer is in effect, the terms of that disciplinary grievance
118 procedure shall take precedence and govern the conduct of the hearing.

119 5. In the event an officer is entitled to a hearing, a hearing shall be scheduled within
120 a reasonable period of time from the alleged incident, but no more than one hundred
121 twenty days following the notification of discipline, unless waived in writing by the charged
122 officer.

123 **6. Any decision, order, or action taken following the hearing shall be in writing and**
124 **shall be accompanied by findings of fact. The findings shall consist of a concise statement**
125 **upon each issue in the case. A copy of the decision or order accompanying the findings and**
126 **conclusions along with the written action and right of appeal, if any, shall be delivered or**
127 **mailed promptly to the law enforcement officer or to the officer's attorney or**
128 **representative of record.**

129 **7. Law enforcement officers shall have the opportunity to provide a written**
130 **response to any adverse materials placed in their personnel file, and such written response**
131 **shall be permanently attached to the adverse material.**

132 **8. Law enforcement officers shall not be subject to double jeopardy in the**
133 **administration of discipline through separate punishments for the same alleged act by**
134 **multiple administrative bodies, except that multiple administrative bodies may impose the**
135 **same punishment concurrently for the same act.**

136 **9. Employers shall defend and indemnify law enforcement officers from and**
137 **against civil claims made against them in their official and individual capacities if the**
138 **alleged conduct arose in the course and scope of their obligations and duties as law**
139 **enforcement officers. This includes actions taken off duty if they were taken under color**
140 **of law. In the event a law enforcement officer is convicted of or pleads guilty to criminal**
141 **charges arising out of the same conduct, the employer shall no longer be obligated to**
142 **defend and indemnify the officer in connection with related civil claims.**

143 **10. No law enforcement officer shall be disciplined, transferred, or placed on a**
144 **status resulting in economic loss based on determinations made by any outside agency.**
145 **Law enforcement officers shall not be disciplined, demoted, dismissed, transferred, or**
146 **placed on a status resulting in economic loss as a result of the assertion of their**
147 **constitutional rights in any judicial proceeding.**

148 **11. The remedies provided by this section against law enforcement agencies or**
149 **governmental bodies shall be in addition to those provided by any other provision of law.**
150 **Any aggrieved law enforcement officer or authorized representative may seek judicial**
151 **enforcement of the requirements of these sections. Suits to enforce these sections shall be**
152 **brought in the circuit court for the county in which the law enforcement agency or**
153 **governmental body has its principal place of business. Upon a finding by a preponderance**
154 **of the evidence that a law enforcement agency, governmental body, or a member of such**
155 **an entity has violated these sections, the law enforcement agency, governmental body, or**
156 **the member shall be subject to a civil penalty in an amount up to five thousand dollars for**
157 **each violation. If the court finds that there is a violation of these sections, the court may**
158 **order the payment by such agency, body, or member of all costs and reasonable attorney's**

159 fees to any party successfully establishing a violation. The court shall determine the
160 amount of the penalty by taking into account the size of the jurisdiction, the seriousness
161 of the offense, and whether the law enforcement agency, governmental body, or member
162 of such entity has violated this section previously.

163 12. Upon a finding by a preponderance of the evidence that a law enforcement
164 agency, governmental body, or a member of such an entity has purposely violated these
165 sections, the law enforcement agency, governmental body, or the member shall be subject
166 to a civil penalty in an amount up to ten thousand dollars. If the court finds that there was
167 a purposeful violation of these sections, then the court shall order the payment by such
168 agency, body, or member of all costs and reasonable attorney's fees to any party
169 successfully establishing such a violation. The court shall determine the amount of the
170 penalty by taking into account the size of the jurisdiction, the seriousness of the offense,
171 and whether the law enforcement agency, governmental body or member of same has
172 violated this section previously.

173 13. Upon a finding by a preponderance of the evidence that a law enforcement
174 agency, governmental body, or member of such an entity has violated any provision of this
175 section, a court shall void any action taken under this section. Suit for enforcement shall
176 be brought within one year from the time a violation is ascertainable.

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