

ASSEMBLY, No. 2425

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED FEBRUARY 7, 2022

Sponsored by:
Assemblyman BENJIE E. WIMBERLY
District 35 (Bergen and Passaic)

SYNOPSIS

“State Law Enforcement Officers’ Bill of Rights.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the rights, privileges and protections afforded
2 certain State law enforcement officers and supplementing Title
3 52 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. This shall be known and may be cited as the "State Law
9 Enforcement Officers' Bill of Rights."

10
11 2. As used in this act:

12 "Disciplinary action" means any adverse personnel action,
13 including suspension, reduction in pay, rank or other employment
14 benefit, dismissal, transfer, reassignment, unreasonable denial of
15 secondary employment or similar punitive action taken against a
16 State law enforcement officer.

17 "Disciplinary hearing" means an administrative hearing initiated
18 by the department against a State law enforcement officer, based on
19 an alleged violation of law or department, commission or agency
20 rule or regulation, that, if proven, would subject the State law
21 enforcement officer to disciplinary action.

22 "Investigation" means an action taken by the employing
23 department, commission or agency or any other State agency or
24 official to determine whether a State law enforcement officer
25 violated any law or department, commission or agency rule or
26 regulation and includes: (1) questioning any other State law
27 enforcement officer or person; (2) conducting observations; (3)
28 reviewing and evaluating reports, records or other documents; and
29 (4) examining physical evidence.

30 "Personnel record" means any document, whether in written or
31 electronic form, that has been, or may be, used in determining the
32 qualification of a State law enforcement officer for employment,
33 promotion, transfer, additional compensation, termination or any
34 other disciplinary action.

35 "State law enforcement officer" means any law enforcement
36 officer in the employ of the State of New Jersey holding a civil
37 service title of any rank in the classified career service, including all
38 State correction officers.

39
40 3. a. Except as otherwise provided by law, no State law
41 enforcement officer holding a permanent appointment shall be
42 removed from office, employment or position for political reasons,
43 collective bargaining activities or for any cause other than
44 incapacity, misconduct or disobedience of rules and regulations
45 established for the governance of the department, commission or
46 agency employing that officer, nor shall any such officer be
47 suspended, removed, fined or reduced in rank from or in office,
48 employment or position, except for just cause and then only upon a

1 written complaint setting forth the charge or charges against the
2 officer.

3 b. Whenever a State law enforcement officer is subject to an
4 immediate suspension, be that suspension with or without pay, the
5 department shall, by verifiable means, notify the officer's employee
6 representative within 24 hours.

7 c. Whenever a State law enforcement officer receives notice of
8 a disciplinary charge or pending disciplinary action, a copy of the
9 notice, along with any related documents that may have been given
10 to the officer, shall be delivered to that officer's employee
11 representative within 72 hours of the time that the notice was given
12 to that officer.

13

14 4. A State law enforcement officer subject to an investigation
15 or disciplinary hearing based on a complaint filed by a private
16 citizen or an inmate shall be afforded the following rights,
17 privileges and protections:

18 a. The complaint shall be in writing and shall be filed in a
19 manner, form and place prescribed by the department, commission
20 or agency employing the officer.

21 b. An investigation based on a complaint filed by a private
22 citizen or an inmate shall commence not later than 15 days after the
23 receipt of the complaint by the department, commission or agency.

24 c. The officer who is the subject of the complaint shall be
25 notified 24 hours prior to the commencement of questioning or
26 otherwise being required to provide information relating to the
27 complaint or investigation of that complaint.

28 d. The notice shall set forth:

29 (1) the nature and scope of the investigation;

30 (2) a description of the allegation set forth in the complaint;

31 (3) a description of each violation of law or departmental,
32 commission or agency rule or regulation alleged in the complaint
33 for which suspicion exists that the officer may have engaged in
34 conduct that may subject the officer to disciplinary action; and

35 (4) the name, rank and position, unit or division of the officer or
36 departmental, commission or agency official who will be
37 conducting the investigation.

38 e. A complaint filed by a private citizen or an inmate may be
39 dismissed without full investigation if:

40 (1) the department, commission or agency determines that the
41 complaint does not constitute a violation of law or departmental,
42 commission or agency rule or regulation; or

43 (2) the complainant failed to comply substantially with the
44 complaint procedure prescribed by the department, commission or
45 agency employing the officer.

46 f. Each complainant shall be entitled to a written notice setting
47 forth the final disposition of the complaint and the reasons for that
48 disposition.

1 5. A State law enforcement officer subject to an investigation
2 or disciplinary hearing based on a complaint brought by the
3 department, commission or agency employing the officer shall be
4 afforded the following rights, privileges and protections:

5 a. The complaint shall be in writing and shall be filed in a
6 manner, form and place prescribed by the department, commission
7 or agency employing the officer.

8 b. A copy of the complaint shall be served upon the officer so
9 charged along with notice of a disciplinary hearing which shall be
10 held not less than 10 or more than 30 days from the date the
11 complaint was served on the officer.

12 A complaint charging a violation of departmental rule or
13 regulation shall be filed no later than 45 days after the date on
14 which the person filing the complaint reasonably became aware of
15 the disciplinary infraction. The 45-day time limit shall not apply if
16 an investigation of a law enforcement officer for a violation of the
17 internal rules or regulations of the department is included directly
18 or indirectly within a concurrent investigation of that officer for a
19 violation of the criminal laws of this State. The 45-day limit shall
20 begin on the day after the disposition of the criminal investigation.

21 A failure to serve or file a complaint within the time limitations
22 set forth in this subsection shall require a dismissal of the
23 complaint.

24 c. The officer who is the subject of the complaint shall be
25 notified 24 hours prior to the commencement of questioning or
26 otherwise being required to provide information relating to the
27 complaint or investigation of that complaint.

28 d. The notice shall set forth:

29 (1) the nature and scope of the investigation;

30 (2) a description of the allegation set forth in the complaint;

31 (3) a description of each violation of law or departmental,
32 commission or agency rule or regulation alleged in the complaint
33 for which suspicion exists that the officer may have engaged in
34 conduct that may subject the officer to disciplinary action; and

35 (4) the name, rank and position, unit or division of the officer or
36 departmental, commission or agency official who will be
37 conducting the hearing.

38 e. The subject officer shall be interviewed or interrogated by a
39 single officer and at the time that interview or interrogation begins
40 the subject officer shall be informed of the name, rank and
41 command of the investigators conducting the investigation. This
42 information shall be recorded on a form which the subject officer
43 shall sign in front of two witnesses, who also shall sign the form.
44 The signed form shall be made a part of the investigative file.

45
46 6. A State law enforcement officer who is subject to
47 questioning incidental to an investigation that might result in
48 disciplinary action shall be afforded the following procedural
49 protections:

- 1 a. The officer shall be entitled to counsel by an attorney, or
2 representation by any other person whom the officer chooses, such
3 as an employee representative, or both, immediately before and
4 during the entire period of any questioning, unless the officer
5 consents in writing to being questioned without the presence of
6 counsel or an employee representative.
- 7 b. During the course of any questioning session, the officer
8 shall be afforded the opportunity to consult privately with counsel,
9 an employee representative, or both, if such consultation does not
10 repeatedly and unnecessarily disrupt the questioning period.
- 11 c. If the counsel or representative of the officer is not available
12 within 24 hours of the time set for the commencement of any
13 questioning, the officer shall be afforded a reasonable extension of
14 time, not to exceed 72 hours, to obtain counsel or representation.
- 15 d. The questioning of an officer under investigation shall be
16 conducted at a reasonable time when the officer is on duty, unless
17 exigent circumstances compel more immediate questioning, or the
18 officer agrees in writing to being questioned at a different time.
- 19 e. Unless the officer consents in writing to being questioned
20 elsewhere, the questioning of an officer under investigation shall be
21 conducted at the office of the officer or department, commission or
22 agency official conducting the investigation or at the place where
23 the officer under investigation reports for duty.
- 24 f. The questioning of an officer under investigation shall be for
25 a reasonable period of time and shall allow for reasonable periods
26 of rest and personal necessities for the officer and the counsel or
27 representative, if present.
- 28 g. No threat against, false or misleading statement to,
29 harassment of, or promise of reward to an officer under
30 investigation shall be made to induce the officer to answer any
31 question, give any statement or otherwise provide information;
32 provided, however, an officer under investigation may be advised
33 that he may be subject to disciplinary action, including termination,
34 if he has received a written grant of immunity and affirmation that
35 the statement given by the officer under immunity shall not be used
36 in any subsequent criminal proceeding against that officer.
- 37 h. All questioning of an officer under investigation shall be
38 recorded in full, either electronically or stenographically, and a
39 copy of the transcript shall be provided to the officer under
40 investigation before any subsequent period of questioning or the
41 filing of any charge against that officer. An officer under
42 investigation may independently record all questioning. If the
43 department, commission or agency or the officer conducting the
44 questioning so requests, the officer under investigation shall
45 provide a copy of that recording to the requesting party.
- 46 i. No officer under investigation shall be compelled to take or
47 submit to a lie detector test as part of that investigation.
- 48 j. All evidence gathered as part of an investigation shall be
49 subject to a chain of custody sufficient to establish it has not been

1 substituted, tampered with, replaced or altered. Evidence where a
2 chain of custody sufficient to establish it has not been substituted,
3 tampered with, replaced or altered shall not be used against any
4 officer, nor shall any record of, or reference to, that evidence be
5 made part of the officer's personnel file.

6
7 7. a. If at any time during an interview or interrogation
8 conducted as part of an administrative investigation, the officer
9 subject to that investigation refuses to respond to a question, citing
10 the protections afforded under the Fifth Amendment to the United
11 States Constitution, the interview or interrogation shall be
12 discontinued and the investigator shall forthwith notify the Attorney
13 General or the county prosecutor, as appropriate.

14 b. If the Attorney General or county prosecutor, as the case
15 may be, grants immunity, the investigator shall so advise the subject
16 officer in writing. The investigator, orally and in writing, shall also
17 advise the subject officer that the immunity applies solely to any
18 criminal offense, not any departmental or administrative hearings or
19 actions and, further, that a failure on the part of the subject officer
20 to fully cooperate in the affected administrative investigation,
21 interview or interrogation may result in disciplinary charges,
22 including termination for cause.

23 The advisory information required in writing under this
24 subsection shall be recorded on a form which the subject officer
25 shall sign in front of two witnesses, who also shall sign the form.
26 The signed form shall be made a part of the investigative file and
27 thereupon the administrative investigation, interview or
28 interrogation shall continue.

29
30 8. a. An investigator may provide for an audio, video or
31 stenographic recording, or any combination thereof, of any
32 administrative interview or interrogation. A copy of any such
33 recordings shall be made available to the subject officer at no cost.

34 b. Nothing herein shall be construed to prohibit a subject
35 officer from providing for an audio, video or stenographic
36 recording, or any combination thereof, of any administrative
37 interview or interrogation. A copy of any such recordings shall be
38 made available to the department, or the State, as the case may be,
39 at cost.

40
41 9. Whenever a State law enforcement officer is called as a
42 witness in any administrative investigation, the investigator, prior to
43 any interview or interrogation of the officer, shall inform that
44 officer, orally and in writing, of the role, responsibility and
45 protections afforded a witness in an administrative investigation,
46 particularly that a witness is not the subject of an administrative
47 hearing or any disciplinary action arising therefrom.

48 In addition, prior to any interview or interrogation of the officer,
49 the investigator shall inform that officer, orally and in writing, that

1 if as a result of the interview or interrogation the officer should
2 become the subject of an administrative investigation that officer
3 shall be immediately notified and advised of all rights, privileges
4 and protections under this act or any other law.

5
6 10. a. Any communication between a State law enforcement
7 officer and an employee representative shall be deemed privileged
8 and the employee representative shall not be required or compelled
9 to disclose that communication in any action or proceeding against
10 the officer, or in any action or proceeding to review a determination
11 made in any action or proceeding against the officer.

12 b. The privilege afforded under this section may be disclosed
13 if:

- 14 (1) authorized by the officer who made the communication;
15 (2) the officer reveals an intention to commit a crime or violent
16 act, or where the officer may have committed a crime outside his
17 duties and employment as a law enforcement officer; or
18 (3) the officer waives the privilege when bringing an action
19 against an employee representative or employee organization and
20 that action involves a privileged communication between the officer
21 and the employee representative.

22 c. The privilege afforded under this section may be claimed by
23 the officer or the spouse, guardian, conservator or executor of the
24 officer if that officer is deceased or permanently incapacitated.

25
26 11. Not later than 30 days after the conclusion of an
27 investigation conducted pursuant to this act, the person in charge of
28 the investigation, or his designee, shall notify the officer who was
29 the subject of the investigation, in writing, of the investigative
30 findings and recommendations for disciplinary action. A failure to
31 notify the officer in accordance with the time limitations set forth in
32 this section shall require a dismissal, with prejudice, of the
33 complaint.

34
35 12. Not later than 15 days following the receipt of a notice
36 required under the provisions of section 11 of P.L. , c. (C.)
37 (pending before the Legislature as this bill), and before the filing of
38 any charge seeking the discipline of the officer who was the subject
39 of the investigation or the commencement of any disciplinary
40 proceeding, the officer who was the subject of the investigation may
41 submit a written response to the findings and recommendations set
42 forth in the notice.

43 The response so submitted may include reference to additional
44 documents, physical objects, witnesses or any other information
45 that the officer believes may constitute exculpatory evidence.

46
47 13. a. An officer shall be entitled to a disciplinary hearing prior
48 to the imposition of any disciplinary action. The subject officer
49 may request that the hearing be held before an impartial arbitrator.

1 Any such request shall be made within 10 days of the receipt of the
2 notice required under the provisions of section 11 of P.L. ,
3 c. (C.) (pending before the Legislature as this bill).

4 The disciplinary hearing shall commence within 30 days of the
5 receipt of the notice required under the provisions of section 7 of
6 P.L. , c. (C.) (pending before the Legislature as this bill).
7 A failure to commence a disciplinary hearing in accordance with the
8 time limitations set forth in this section shall require a dismissal of
9 the complaint and the officer shall be returned to duty without
10 prejudice.

11 b. Notwithstanding the provisions of subsection a. of this
12 section, an officer may be suspended immediately, prior to a
13 hearing, when it is determined:

14 (1) The officer is unfit for duty or is a hazard to any person if
15 permitted to remain on the job, or that an immediate suspension is
16 necessary to maintain the safety, health, order or effective direction
17 of the department, its officers, employees, facilities or the inmates
18 in its custody and care; or

19 (2) The officer is formally charged with a crime of the first,
20 second or third degree, or a crime of the fourth degree directly
21 associated with the performance of his official duties.

22 An officer suspended pursuant to paragraph (2) of this subsection
23 shall be suspended without pay until the case against the officer is
24 disposed of at trial, the complaint is dismissed or the prosecution is
25 terminated.

26 c. If a suspended officer is found not guilty at trial, the charges
27 are dismissed or the prosecution is terminated, that officer shall be
28 reinstated to his position and shall be entitled to recover any pay
29 withheld during the period of suspension, subject to any
30 disciplinary proceedings or administrative action. All such
31 withheld pay shall be paid to the officer within 30 days of the date
32 on which the officer was found not guilty at trial, the charges were
33 dismissed or the prosecution terminated. An officer who does not
34 receive all such withheld pay within that 30-day period may seek
35 relief in Superior Court.

36
37 14. The date, time and location of a disciplinary hearing shall be
38 established by the department, commission or agency employing the
39 officer, in consultation with the officer charged or his counsel or
40 representative.

41
42 15. Unless waived in writing by the officer charged, or his
43 counsel or representative, the officer shall, at least 15 days prior to
44 the commencement of the disciplinary hearing, be provided with:

45 a. A complete copy of the investigation leading to the
46 disciplinary hearing, and any related documents, reports, records or
47 statements;

48 b. The names and addresses of each witness scheduled to
49 testify at the disciplinary hearing; and

1 c. An inventory of all physical evidence.

2 No less than 10 days before the disciplinary hearing, the
3 department shall establish a reasonable date, time, place and manner
4 for the officer, or his counsel or representative, to examine all the
5 physical evidence.

6

7 16. An officer subject to a disciplinary hearing shall be entitled
8 to due process, including, but not limited to:

9 a. The right to be represented by counsel or a representative;

10 b. The right to confront and examine witnesses against the
11 officer; and

12 c. The right to call and examine witnesses on behalf of the
13 officer.

14

15 17. The hearing officer or impartial arbitrator, as the case may
16 be, may provide for an audio, video or stenographic recording, or
17 any combination thereof, of the hearing. A copy of any such
18 recording shall be made available to the subject officer at no cost.

19 Nothing herein shall be construed to prohibit a subject officer
20 from providing for an audio, video or stenographic recording, or
21 any combination thereof, of any hearing. A copy of any such
22 recording shall be made available to the officer's employing
23 department, commission or agency, or the State, as the case may be,
24 at cost.

25

26 18. The disciplinary hearing officer or impartial arbitrator, as the
27 case may be, shall have the power to subpoena witnesses and
28 documentary evidence on behalf of either the department or the
29 officer who is the subject of the hearing. The Superior Court shall
30 have jurisdiction to enforce any such subpoena.

31

32 19. A disciplinary hearing shall be closed to the public unless
33 the officer who is the subject of the hearing requests, in writing,
34 that the hearing be open to specified individuals or the general
35 public.

36

37 20. The disciplinary hearing officer or impartial arbitrator, as the
38 case may be, shall administer an oath or affirmation to each
39 witness, whose testimony shall be governed by N.J.S.2C:28-2.

40

41 21. a. At the conclusion of the hearing, the disciplinary hearing
42 officer or impartial arbitrator, as the case may be, shall render a
43 written final decision on each charge within 20 days.

44 b. If the disciplinary hearing officer finds that the officer who
45 is the subject of the hearing is guilty of any alleged violation,
46 appropriate disciplinary action shall be taken against the officer.

47 c. If the disciplinary hearing officer finds that the officer who
48 is the subject of the hearing is not guilty of any alleged violation:

1 (1) The matter shall be deemed concluded and the allegations
2 dismissed;

3 (2) No disciplinary act shall be taken against the officer;

4 (3) No record of, nor any reference to, the charge for which the
5 officer was found not guilty shall be made part of the officer's
6 personnel file;

7 (4) The officer shall be reinstated to his position; and

8 (5) Any pay or benefits lost or deferred during the disposition of
9 the charge shall be restored to the officer as though no charge had
10 ever been filed against that officer, including pay, vacation,
11 holidays, longevity pay, seniority, and any other emolument or
12 benefit to which that officer was entitled under law or collective
13 agreement. All such lost or deferred pay shall be paid to the officer
14 within 30 days of the date on which the officer was found not guilty
15 of any alleged violation by the disciplinary hearing officer. An
16 officer who does not receive all such lost or deferred pay within that
17 30-day period may seek relief in Superior Court.

18

19 22. An officer who is aggrieved by any finding or determination
20 by a disciplinary hearing officer may appeal that finding or
21 determination to the Commissioner of Personnel or the Merit
22 System Board, as appropriate. The appeal, which shall be filed
23 within 20 days after the aggrieved officer received notice of the
24 disciplinary hearing officer's finding or determination, shall be in
25 writing, signed by the appellant or his representative, set forth the
26 reason for the appeal and the specific relief requested.

27 All appeals shall be filed in the manner and form prescribed by
28 the officer's employing department, commission or agency, law,
29 rule or regulation.

30

31 23. An officer who is notified, pursuant to section 4 or 5 of
32 P.L. , c. (C.) (pending before the Legislature as this bill)
33 that he is under investigation or is the subject of a charge may
34 waive in writing any right or procedure accorded under this act.

35

36 24. A State law enforcement officer shall be granted time off
37 with pay to attend any administrative or disciplinary proceeding or
38 any proceeding before the Office of Administrative Law, the Merit
39 System Board or the Public Employment Relations Commission
40 where that officer has been named a party or is called as an
41 essential witness. The time off granted shall include a reasonable
42 allowance for travel.

43 a. A State law enforcement officer shall have the right to
44 receive, review and rejoin any material which adversely reflects
45 upon the officer or his employment. No such material shall be
46 incorporated into the officer's personnel file, official work history
47 or any other such compilation of employment or personnel
48 information unless the subject officer has been afforded the
49 opportunity to review and rejoin the material. An officer refusing

1 to receive, review and, if so inclined, rejoin such material shall not
2 prohibit the incorporation of that material into the officer's
3 personnel file, official work history or any other such compilation
4 of employment or personnel information.

5 b. Notwithstanding the provisions of subsection a. of this
6 section, material which adversely reflects upon an officer or his
7 employment may be incorporated in that officer's personnel file,
8 official work history or any other such compilation of employment
9 or personnel information if the officer refuses to receive that
10 information for review. The serving authority shall notify the
11 officer's employee representative of any such refusal in writing
12 within three days. Four days thereafter, the material may be
13 incorporated in the officer's file, work history or other such
14 compilation.

15
16 25. Nothing herein shall be deemed to preempt or supersede any
17 provision in a mutually agreed-upon collective agreement that
18 provides for substantially similar or greater rights, privileges and
19 protections than those afforded State law enforcement officers in
20 this act.

21
22 26. This act shall take effect on the first day of the fifth month
23 following enactment; except that the affected departments,
24 commissions and agencies may take anticipatory administrative
25 action in advance as shall be necessary for the implementation of
26 this act.

27 28 29 STATEMENT

30
31 This bill, to be known as the "State Law Enforcement Officers'
32 Bill of Rights," establishes specific rights, privileges and
33 protections for State law enforcement officers, including State
34 correction officers who are subject to charges which, after
35 investigation, might lead to disciplinary hearings and actions.

36 The bill sets time frames for the commencement of
37 investigations of complaints. If the complaint is initiated by a
38 private citizen or inmate, the investigation must begin within 15
39 days of the date the complaint is received. If the complaint is
40 brought by the department, commission or agency employing the
41 officer, a disciplinary hearing must be scheduled no less than 10
42 days, or more than 30 days, from the date the complaint was served
43 on the officer. Violations of departmental, commission or agency
44 rules or regulations must be filed no more than 45 days after the day
45 on which the person filing the charge reasonably becomes aware of
46 the violation. A complaint must be dismissed if it is not filed
47 within these time frames.

48 Among the procedural rights and protections State law
49 enforcement officers are afforded under this bill are: (1) notice of

1 the nature and scope of the investigation or charges; (2) 24-hour
2 advance notice before an officer subject to investigation may be
3 questioned; (3) right to counsel, or an employee representative,
4 during questioning; (4) records of all questioning periods; and (5)
5 assurance that no officer is required to submit to a lie detector test
6 as part of any investigation.

7 Charges must be filed within 30 days of the conclusion of any
8 investigation. A failure to comply with this requirement will result
9 in the dismissal of all charges.

10 No disciplinary action may be taken against an officer until that
11 officer has been afforded a hearing. Notwithstanding that
12 requirement, an officer who is charged with a crime, and who is
13 found to be unfit for duty or is a danger to any person if permitted
14 to remain on the job, may be suspended without a hearing. An
15 officer may also be suspended without a hearing if he is formally
16 charged with a crime or if immediate suspension is needed to
17 maintain the safety, health or order of the department, commission
18 or agency employing the officer. An officer who is formally
19 charged with a crime is to be suspended without pay. If, however,
20 he is found not guilty, the charges are dismissed or the prosecution
21 is terminated, that officer is to receive all back pay within 30 days
22 of that disposition.

23 If the disciplinary hearing officer finds or determines that a
24 charged officer is not guilty: (1) the matter is deemed concluded
25 and all charges are dismissed; (2) no disciplinary action may be
26 taken against the officer; (3) no record of, or reference to, the
27 charge for which the officer was found not guilty shall be made part
28 of the officer's personnel file; (4) the officer is to be reinstated to
29 his position; and (5) the officer is entitled to any pay or benefits lost
30 or deferred during the disposition of the charge. The officer is also
31 entitled to any longevity pay, seniority or any other emolument or
32 benefit to which he was entitled under law or collective agreement.
33 All lost or deferred pay is to be paid to the officer within 30 days.

34 Any officer who is aggrieved by a determination or finding of a
35 disciplinary hearing officer has the right to appeal to the
36 Commissioner of Personnel or the Merit System Board, as is
37 appropriate.

38 The provisions of this bill do not apply to State Police officers
39 and troopers.