

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 760

Short Title: Law Enf. Off. Discipline

(Public)

Sponsors: Representatives Hensley, Russell; Beall, Black, Brawley, Culpepper, Cunningham, Fox, Gamble, Hill, Locke, Luebke, G. Miller, Redwine, and Warner.

Referred to: Judiciary I.

April 5, 1995

A BILL TO BE ENTITLED

AN ACT TO STANDARDIZE THE INVESTIGATION AND DISCIPLINE OF LAW ENFORCEMENT OFFICERS AND TO PROVIDE FOR JUDICIAL REVIEW.

The General Assembly of North Carolina enacts:

Section 1. For the purpose of this act:

(1) "Employing agency" means any State agency or department, municipality, or political subdivision of the State that employs law enforcement officers.

(2) "Law enforcement officer" means all officers with the powers of arrest as defined by law and required to be certified under Chapters 17C and 17E of the General Statutes.

(3) "Officer" means law enforcement officer.

Sec. 2. If an investigation by an employing agency involves matters which could reasonably lead to the dismissal, demotion, suspension, or transfer for punitive reasons of, or any disciplinary action against, a law enforcement officer, it is required that:

(1) Any questioning of the officer shall be conducted at a reasonable time and place as designated by the investigating officer, preferably when the officer under investigation is on duty and at the office of the command

1 of the investigating officer, or at the office of the local precinct or police
2 unit of the officer being investigated, unless exigent circumstances
3 require otherwise.

4 (2) Prior to the questioning of the officer under investigation, he or she shall
5 be informed of:

6 a. The name and rank of the investigating officer and of any
7 individual present during the questioning; and

8 b. The nature of the investigation, whether it is criminal, civil, or
9 administrative.

10 (3) If the investigation is criminal in nature, prior to the beginning of
11 questioning, the officer under investigation shall be informed of the
12 names of all complainants and witnesses, shall be permitted to review
13 all written or otherwise recorded statements made by, or on behalf of,
14 all complainants and witnesses, and shall be informed of his or her
15 constitutional and statutory rights in the same manner as is required to
16 be given to any other person suspected of a crime.

17 (4) Questioning sessions shall be for a reasonable duration and shall allow
18 time for reasonable rest periods and for personal necessities.

19 (5) The officer being questioned shall not be subjected to offensive
20 language or threats of transfer, dismissal, or disciplinary action. No
21 promise or reward shall be made as an inducement to answering any
22 questions.

23 (6) The questioning of an officer, including all recess periods, shall be
24 recorded, and there shall be no unrecorded questions or statements.

25 (7) If the officer being questioned is under arrest, or is likely to be placed
26 under arrest as a result of the questioning, he or she shall be fully
27 informed of all his or her rights as set forth above in subdivision (3)
28 prior to the commencement of the questioning.

29 (8) At the request of the officer under investigation, the officer shall have
30 the right to be represented by legal counsel or by any other
31 representative of his choice, who shall be allowed to be present at all
32 times during questioning.

33 Sec. 3. Before the dismissal, demotion, suspension, or transfer for punitive
34 reasons of a law enforcement officer, the employing agency shall:

35 (1) Notify the office in writing of all charges, the basis thereof, and the
36 action which may be taken against the officer;

37 (2) Give the officer a meaningful opportunity, within a reasonable time
38 limit after the date of the written notice provided for above, to respond
39 orally and in writing to the charges. The period of time in which the
40 officer may submit the response shall be determined by the employing
41 agency, but in no event shall it be less than 10 working days from the
42 officer's receipt of the written notification unless agreed to by the
43 officer; and

1 (3) In making his or her response, the officer may be assisted by a
2 representative of his own choosing and at his own expense.

3 Sec. 4. (a) If the law enforcement officer is adversely affected by the
4 employing agency's final decision or that of the local civil service commission, if
5 applicable, the officer may appeal to the superior court in the county where the officer is
6 employed or the employing agency is headquartered. The appeal must be taken within 30
7 days after the law enforcement officer receives notice of the final decision.

8 (b) Except as otherwise specified in this section, any appeal from a final
9 employing agency decision must be taken under the provisions of Article 4 of Chapter
10 150A of the General Statutes (the Judicial Review Article of the North Carolina
11 Administrative Procedure Act). Appeals shall also be subject to any relevant rules
12 adopted or observed by the superior court of the county where the appeal is filed.

13 Sec. 5. (a) Officers may be suspended, but only if pay and benefits continue. If
14 an officer commits a severe offense, he or she may be suspended then terminated
15 summarily according to the provisions of local policy. Nothing in this act shall prevent
16 the immediate suspension with pay of any law enforcement officer whose continued
17 presence on the job is deemed to be a substantial and immediate threat to the welfare of
18 his agency or the public, nor shall anything in this act prevent the suspension of an officer
19 for refusing to obey a direct order issued in conformance with the agency's written and
20 disseminated rules and regulations. In such case, the officer shall be afforded the rights
21 provided for under this act, except that an officer's request to be heard by a complaint
22 review board shall be made subsequent to the imposition of such suspension.

23 (b) The rights accorded law enforcement officers herein shall be minimum rights,
24 and all agencies shall promulgate written grievance procedures not inconsistent herewith;
25 provided that any agency may provide for rights of law enforcement officers in addition
26 hereto.

27 (c) No law enforcement officer shall be discharged, disciplined, demoted, denied
28 promotion, transferred, or reassigned, or otherwise discriminated against with regard to
29 his employment, or be threatened with any such treatment, by reason of his exercise of
30 the rights granted by this act.

31 (d) If any employing agency fails to comply with the requirements of this act, a
32 law enforcement officer employed by such employing agency who is personally injured
33 by such failure to comply may apply directly to the superior court of the county wherein
34 such employing agency is headquartered and permanently resides for an injunction to
35 restrain and enjoin such violation in whole or in part and to compel the performance of
36 the duties imposed by this act. Should the court find that the employing agency has
37 violated any provision of this act, said agency must pay the officer's reasonable attorneys'
38 fees. The court, in its discretion, may award as exemplary damages up to three times the
39 actual loss sustained by the officer.

40 Sec. 6. This act becomes effective October 1, 1995, and applies to
41 investigations and disciplinary proceedings commenced on or after that date.