

CHAPTER 42-28.6

Law Enforcement Officers' Bill of Rights

§ 42-28.6-1 Definitions – Payment of legal fees. – As used in this chapter, the following words have the meanings indicated:

(1) "Law enforcement officer" means any permanently employed city or town police officer, state police officer, permanent law enforcement officer of the department of environmental management, or those employees of the airport corporation of Rhode Island who have been granted the authority to arrest by the director of said corporation. However this shall not include the chief of police and/or the highest ranking sworn officer of any of the departments including the director and deputy director of the airport corporation of Rhode Island.

(2)(i) "Hearing committee" means a committee which is authorized to hold a hearing on a complaint against a law enforcement officer and which consists of three (3) active or retired law enforcement officers from within the state of Rhode Island, other than chiefs of police, who have had no part in the investigation or interrogation of the law enforcement officer. The committee shall be composed of three (3) members; one member selected by the chief or the highest ranking officer of the law enforcement agency, one member selected by the aggrieved law enforcement officer and the third member shall be selected by the other two (2) members. In the event that the other two (2) members are unable to agree within five (5) days, then either member will make application to the presiding justice of the superior court and the presiding justice shall appoint the third member who shall be an active law enforcement officer. Upon written application by a majority of the hearing committee, the presiding justice, in his or her discretion, may also appoint legal counsel to assist the hearing committee.

(ii) The law enforcement agency and the law enforcement officer under investigation shall each be responsible to pay fifty percent (50%) of the legal fee of the appointed legal counsel for the hearing committee; provided, however, that on motion made by either party, the presiding justice shall have the authority to make a different disposition as to what each party is required to pay toward the appointed legal counsel's legal fee.

(3) "Hearing" means any meeting in the course of an investigatory proceeding, other than an interrogation at which no testimony is taken under

oath, conducted by a hearing committee for the purpose of taking or adducing testimony or receiving evidence.

§ 42-28.6-2 Conduct of investigation. – Whenever a law enforcement officer is under investigation or subjected to interrogation by a law enforcement agency, for a non-criminal matter which could lead to disciplinary action, demotion, or dismissal, the investigation or interrogation shall be conducted under the following conditions:

(1) The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer is on duty.

(2) The interrogation shall take place at an office within the department previously designated for that purpose by the chief of police.

(3) The law enforcement officer under interrogation shall be informed of the name, rank, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by and through one interrogator.

(4) No complaint against a law enforcement officer shall be brought before a hearing committee unless the complaint be duly sworn to before an official authorized to administer oaths.

(5) The law enforcement officer under investigation shall, prior to any interrogating, be informed in writing of the nature of the complaint and of the names of all complainants.

(6) Interrogating sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.

(7) Any law enforcement officer under interrogation shall not be threatened with transfer, dismissal, or disciplinary action.

(8) If any law enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, he or she shall be completely informed of all his or her rights prior to the commencement of the interrogation.

(9) At the request of any law enforcement officer under interrogation, he or she shall have the right to be represented by counsel of his or her choice who

shall be present at all times during the interrogation. The interrogation shall be suspended for a reasonable time until representation can be obtained.

(10) No statute shall abridge nor shall any law enforcement agency adopt any regulation which prohibits the right of a law enforcement officer to bring suit arising out of his or her duties as a law enforcement officer.

(11) No law enforcement agency shall insert any adverse material into any file of the officer unless the officer has an opportunity to review and receive a copy of the material in writing, unless the officer waives these rights in writing.

(12) No public statement shall be made prior to a decision being rendered by the hearing committee and no public statement shall be made if the officer is found innocent unless the officer requests a public statement; provided, however, that this subdivision shall not apply if the officer makes a public statement. The foregoing shall not preclude a law enforcement agency, in a criminal matter, from releasing information pertaining to criminal charges which have been filed against a law enforcement officer, the officer's status of employment and the identity of any administrative charges brought against said officer as a result of said criminal charges.

(13) No law enforcement officer shall be compelled to speak or testify before, or be questioned by, any non-governmental agency.

§ 42-28.6-3 Disclosure of personal information. – No law enforcement officer shall be required or requested to disclose any item of his or her property, income, assets, source of income, debts, or personal or domestic expenditures (including those of any member of his or her family or household) unless that information is necessary in investigating a possible conflict of interest with respect to the performance of his or her official duties, or unless the disclosure is required by law.

§ 42-28.6-4 Right to hearing – Notice request for hearing – Selection of hearing committee. – (a) If the investigation or interrogation of a law enforcement officer results in the recommendation of some action, such as demotion, transfer, dismissal, loss of pay, reassignment, or similar action which would be considered a punitive measure, then, before taking such action, the law enforcement agency shall give notice to the law enforcement officer that he or she is entitled to a hearing on the issues by a hearing committee. The law enforcement officer may be relieved of duty subject to § 42-28.6-13 of this chapter, and shall receive all ordinary pay and benefits as he or she would have if he or she were not charged.

Disciplinary action for violation(s) of departmental rules and/or regulations shall not be instituted against a law enforcement officer under this chapter more than three (3) years after such incident, except where such incident involves a potential criminal offense, in which case disciplinary action under this chapter may be instituted at any time within the statutory period of limitations for such offense.

(b) Notice under this section shall be in writing and shall inform the law enforcement officer of the following:

(i) The nature of the charge(s) against him or her and, if known, the date(s) of the alleged offense(s);

(ii) The recommended penalty;

(iii) The fact that he or she has five (5) days from receipt of the notice within which to submit a written request for a hearing; and

(iv) The name and address of the officer to whom a written request for a hearing (and other related written communications) should be addressed.

(c) The law enforcement officer shall, within five (5) days of his or her receipt of notice given pursuant to subsection (b) herein, file a written request for hearing with the officer designated in accordance with subdivision (b)(iv). Failure to file a written request for a hearing shall constitute a waiver of his or her right to a hearing under this chapter; provided, however, that the presiding justice of the superior court, upon petition and for good cause shown, may permit the filing of an untimely request for hearing.

(d) The law enforcement officer shall provide the charging law enforcement agency with the name of one active or retired law enforcement officer to serve on the hearing committee, within five (5) days of the filing of his or her request for a hearing. Failure by the law enforcement officer to file his or her filing committee selection within the time period shall constitute a waiver of his or her right to a hearing under this chapter; provided, however, that the presiding justice of the superior court, upon petition and for good cause shown, may permit the filing of an untimely hearing committee selection by the officer. The charging law enforcement agency may impose the recommended penalty during the pendency of any such petition.

(e) The charging law enforcement agency shall provide the law enforcement officer with the name of one active or retired law enforcement officer to serve

on the hearing committee, within five (5) days of its receipt of the officer's request for a hearing. Failure by the charging law enforcement agency to file its hearing committee selection within that time period shall constitute a dismissal of all charges against the law enforcement officer, with prejudice; provided, however, that the presiding justice of the superior court, upon petition and for good cause shown, and permit the filing of an untimely hearing committee selection by the agency. Except as expressly provided in § 42-28.6-13 of this chapter, no disciplinary action shall be taken against the officer by virtue of the stated charges during the pendency of any such petition.

(f) Within five (5) days of the charging law enforcement agency's selection of a hearing committee member, the hearing committee members selected by the officer and by the agency shall:

(i) Jointly select a third hearing committee member, who shall serve as chairperson of the hearing committee;

(ii) Petition the presiding justice of the superior court to select a third hearing committee member, who shall be an active law enforcement officer, and who shall serve as chairperson of the hearing committee; or

(iii) Agree to an extension of time, not to exceed thirty (30) days, for the selection of a third hearing committee member.

(g) Law enforcement officers selected to serve on a hearing committee under this chapter shall be relieved of duty for each day of actual hearing and shall be compensated by their respective agencies at their ordinary daily rate of pay for each day actually spent in the conduct of the hearing hereunder.

(h) Two (2) lists of active police officers available to serve as chairpersons of hearing committees under this chapter shall be provided annually to the presiding justice of the superior court. One list shall be provided by the Rhode Island Police Chiefs' Association; the other shall be appointed, jointly, by the Fraternal Order of Police and the International Brotherhood of Police Officers. In selecting officers to serve as chairpersons of hearing committees under this chapter, the presiding justice shall alternate between the two (2) lists so provided.

(i) Whenever a law enforcement officer faces disciplinary action as a result of criminal charges, the provisions of subsections (c), (d), (e) and (f) shall be suspended pending the adjudication of said criminal charges.

§ 42-28.6-5 Conduct of hearing. – (a) The hearing shall be conducted by the hearing committee selected in accordance with § 42-28.6-4 of this chapter. Both the law enforcement agency and the law enforcement officer shall be given ample opportunity to present evidence and argument with respect to the issues involved. Both may be represented by counsel.

(b) The hearing shall be convened at the call of the chair; shall commence within thirty (30) days after the selection of a chairperson of the hearing committee; and shall be completed within sixty (60) days of the commencement of the hearing. The hearing committee shall render a written decision within thirty (30) days after the conclusion of the hearing. The time limits established in this subsection may be extended by the presiding justice of the superior court for good cause shown.

(c) Not less than ten (10) days prior to the hearing date, the charging law enforcement agency shall provide to the law enforcement officer:

(i) A list of all witnesses, known to the agency at that time, to be called by the agency to testify at the hearing;

(ii) Copies of all written and/or recorded statements by such witnesses in the possession of the agency; and

(iii) A list of all documents and other items to be offered as evidence at the hearing.

(d) Not less than five (5) days prior to the hearing date, the law enforcement officer shall provide to the charging law enforcement agency a list of all witnesses, known to the officer at that time, to be called by the officer to testify at the hearing.

(e) Failure by either party to comply with the provisions of subsections (c) and (d) of this section shall result in the exclusion from the record of the hearing of testimony and/or evidence not timely disclosed in accordance with those subsections.

§ 42-28.6-6 Evidence at hearing – Hearing record. – (a) Evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs shall be admissible and shall be given probative effect. The hearing committee conducting the hearing shall give effect to the rules of privilege recognized by law, and may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. All

records and documents which any party desires to use shall be offered and made part of the record.

(b) No statements, documents and/or other evidence and no copies of any statements, documents and/or other evidence shall be presented to the hearing committee prior to the hearing.

(c) All proceedings before the hearing committee shall be recorded by stenographic record, the expense of which shall be borne by the charging law enforcement agency. A copy of the record shall be provided to the law enforcement officer or his or her attorney or representative of record upon request.

§ 42-28.6-7 Subpoena – Oath – Production of documents. – With respect to the subject of any investigation or hearing conducted pursuant to this section, the hearing committee may subpoena witnesses and administer oaths or affirmations and examine any individual under oath, and may require and compel the production of records, books, papers, contracts, and other documents.

§ 42-28.6-8 Witness fees. – Witness fees and mileage, if claimed, shall be allowed the same as for testimony in the superior court. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the law enforcement agency if the officer is ultimately found innocent.

§ 42-28.6-9 Cross-examination and rebuttal. – Every party has the right of cross-examination of the witnesses who testify, and may submit rebuttal evidence.

§ 42-28.6-10 Judicial notice. – The hearing committee conducting the hearing may take notice of judicially cognizable facts and, in addition, may take notice of general, technical, or scientific facts within its specialized knowledge.

§ 42-28.6-11 Decisions of hearing committee. – (a) The hearing committee shall be empowered to sustain, modify in whole or in part, or reverse the complaint or charges of the investigating authority, as provided in § 42-28.6-4.

(b) Any decision, order, or action taken as a result of the hearing shall be in writing and shall be accompanied by findings of fact. The findings shall consist of a concise statement upon each issue in the case. Copies of the decision or order and accompanying findings and conclusions shall be delivered or mailed

promptly to the law enforcement officer or to his or her attorney or representative of record and to the law enforcement agency or to its attorney or representative of record.

(c) In any proceeding under this chapter, it shall be the burden of the charging law enforcement agency to prove, by a fair preponderance of the evidence, that the law enforcement officer is guilty of the offense(s) or violation(s) of which he or she is accused.

§ 42-28.6-12 Appeals. – (a) Appeals from all decisions rendered by the hearing committee shall be to the superior court in accordance with §§ 42-35-15 and 42-35-15.1. For purposes of this section, the hearing committee shall be deemed an administrative agency and its final decision shall be deemed a final order in a contested case within the meaning of §§ 42-35-15 and 42-35-15.1.

(b) Within thirty (30) days after the service of the complaint in accordance with § 42-35-15, or within further time allowed by the court, the hearing committee shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

§ 42-28.6-13 Suspensions. – (a) The provisions of this chapter are not intended to prohibit suspensions by the chief or the highest ranking officer of the law enforcement agency.

(b) Summary punishment of two (2) days' suspension without pay may be imposed for minor violations of departmental rules and regulations. Appeals of suspension under this subsection shall be subject to the grievance provisions of any applicable collective bargaining agreement.

(c) Suspension may be imposed by the chief or the highest ranking sworn officer of the law enforcement agency when the law enforcement officer is under investigation for a criminal felony matter. Any suspension shall consist of the law enforcement officer being relieved of duty, and he or she shall receive all ordinary pay and benefits as he or she would receive if he or she were not suspended. Suspension under this subsection shall not exceed one hundred eighty (180) days.

(d) Suspension may be imposed by the chief or highest ranking sworn officer of the law enforcement agency when the law enforcement officer is under investigation for a misdemeanor criminal matter. Any such suspension shall consist of the law enforcement officer being relieved of duty, and he or she shall receive all ordinary pay and benefits as he or she would receive if he or she were not suspended. Suspension under this subsection shall not exceed thirty (30) days; provided, however, that if an officer is charged with a misdemeanor offense the chief or highest ranking sworn officer of the law enforcement agency may continue said suspension with pay up to a total of one hundred and eighty (180) days. If the disposition of the criminal matter does not take place within one hundred eighty (180) days of the commencement of such suspension, the law enforcement officer may be suspended without pay and benefits; provided, however, that the officer's entitlement to such medical insurance, dental insurance, disability insurance and life insurance as is available to all other officers within the agency shall not be suspended. The law enforcement officer may petition the presiding justice of the superior court for a stay of the suspension without pay, and such stay shall be granted upon a showing that said delay in the criminal disposition was outside the law enforcement officer's control. In the event the law enforcement officer is acquitted of any misdemeanor related thereto, the officer shall be forthwith reinstated and reimbursed all salary and benefits that have not been paid during the suspension period.

(e) Suspension may be imposed by the chief or highest ranking sworn officer of the law enforcement agency when the law enforcement officer is under investigation for a noncriminal matter. Any such suspension shall consist of the law enforcement officer being relieved of duty, and he or she shall receive all ordinary pay and benefits as he or she would receive if he or she were not suspended. Suspension under this subsection shall not exceed fifteen (15) days or any other time frame established under the provisions of any applicable collective bargaining agreement.

(f) Suspension may be imposed by the chief or highest ranking sworn officer of the law enforcement agency upon receipt of notice or disciplinary action in accordance with § 42-28.6-4(b) of this chapter in which termination or demotion is the recommended punishment. Any such suspension shall consist of the law enforcement officer being relieved of duty, and he or she shall receive all ordinary pay and benefits as he or she would receive if he or she were not so suspended.

(g) Any law enforcement officer who is charged, indicted or informed against for a felony or who is convicted of and incarcerated for a misdemeanor may be suspended without pay and benefits at the discretion of the agency or chief or highest ranking sworn officers; provided, however, that the officer's entitlement to medical insurance, dental insurance, disability insurance and life insurance as is available to all other officers within the agency shall not be suspended. In the event that the law enforcement officer is acquitted of any felony related thereto, the officer shall be reinstated and reimbursed forthwith for all salary and benefits that have not been paid during the suspension period.

(h) Any law enforcement officer who is convicted of a felony shall, pending the prosecution of an appeal, be suspended without pay and benefits; provided, however, that the officer's entitlement to such medical insurance, dental insurance, disability insurance and life insurance as is available to all other officers within the agency shall not be suspended. Whenever, upon appeal, such conviction is reversed, the suspension under this subsection shall terminate and the law enforcement officer shall forthwith be paid the salary and benefits that would have been paid to him or her during that period of suspension.

(i) Any law enforcement officer who pleads guilty or no contest to a felony charge or whose conviction of a felony has, after or in the absence of a timely appeal, become final may be dismissed by the law enforcement agency and, in the event of such dismissal, other provisions of this chapter shall not apply.

§ 42-28.6-14 Retaliation for exercising rights. – (a) No law enforcement officer shall be discharged, demoted, disciplined, or denied promotion, transfer or reassignment, or otherwise discriminated against in regard to his or her employment or be threatened with any such treatment, by reason of his or her exercise of or demand for rights granted in this subtitle, or by reason of the lawful exercise of his or her constitutional rights.

(b) Any law enforcement officer who is denied any right afforded by this subtitle may apply, either individually or through his or her certified or recognized employee organization, to the superior court where he or she resides or is regularly employed for any order directing the law enforcement agency to show cause why the right should not be afforded.

§ 42-28.6-15 Exclusivity of remedy. – The remedies contained herein shall be the sole and exclusive remedies for all law enforcement officers subject to the provisions of this chapter.

§ 42-28.6-16 Immunity of hearing committee members. – No member of a hearing committee constituted in accordance with the provisions of this chapter shall be held civilly liable for any breach of his or her duties as such member, provided that nothing herein shall eliminate or limit the liability of a qualified member:

(1) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

(2) For any transaction from which such member derived an improper personal benefit; or

(3) For any malicious, willful or wanton act.

§ 42-28.6-17 Severability. – If any provision of this chapter or other application thereof shall for any reason be judged invalid such a judgment shall not affect, impair or invalidate the remainder of the law, but shall be confined in its effect to the provisions or application directly involved in the controversy giving rise to the judgment.