

Law-Enforcement Officers Procedural Guarantee Act

§ 9.1-500. (Effective until July 1, 2018) Definitions

As used in this chapter, unless the context requires a different meaning:

"Agency" means the Department of State Police, the Division of Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the Department of Alcoholic Beverage Control, the Department of Conservation and Recreation, or the Department of Motor Vehicles; or the political subdivision or the campus police department of any public institution of higher education of the Commonwealth employing the law-enforcement officer.

"Law-enforcement officer" means any person, other than a Chief of Police or the Superintendent of the Department of State Police, who, in his official capacity, is (i) authorized by law to make arrests and (ii) a nonprobationary officer of one of the following agencies:

- a. The Department of State Police, the Division of Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the Department of Alcoholic Beverage Control, the Department of Motor Vehicles, or the Department of Conservation and Recreation;
- b. The police department, bureau or force of any political subdivision or the campus police department of any public institution of higher education of the Commonwealth where such department, bureau or force has 10 or more law-enforcement officers; or
- c. Any conservation police officer as defined in § 9.1-101.

For the purposes of this chapter, "law-enforcement officer" shall not include the sheriff's department of any city or county.

1978, c. 19, § 2.1-116.1; 1979, c. 592; 1983, c. 357; 1995, c. 730; 2001, c. 844; 2007, cc. 87, 364.

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§ 9.1-501. Conduct of investigation

The provisions of this section shall apply whenever an investigation by an agency focuses on matters which could lead to the dismissal, demotion, suspension or transfer for punitive reasons of a law-enforcement officer:

1. Any questioning of the officer shall take place 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 of the investigating officer or at the office of the local precinct or police unit of the officer being investigated, unless matters being investigated are of such a nature that immediate action is required.
2. Prior to the officer being questioned, he shall be informed of (i) the name and rank of the investigating officer and of any individual to be present during the questioning and (ii) the nature of the investigation.
3. When a blood or urine specimen is taken from a law-enforcement officer for the purpose of determining whether the officer has used drugs or alcohol, the specimen shall be divided and placed into two separate containers. One specimen shall be tested while the other is held in a proper manner to preserve the specimen by the facility collecting or testing the specimen. Should the first specimen test positive, the law-enforcement officer shall have the right to require the second specimen be sent to a laboratory of his choice for independent testing in accordance generally with the procedures set forth in §§ 18.2-268.1 through 18.2-268.12. The officer shall notify the chief of his agency in writing of his request within 10 days of being notified of positive specimen results. The laboratory chosen by the officer shall be accredited or certified by one or more of the following bodies: the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), the College of American Pathologists (CAP), the United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA), or the American Board of Forensic Toxicology (ABFT).

1978, c. 19, § 2.1-116.2; 1992, c. 221; 1993, c. 229; 2001, c. 844; 2005, cc. 868, 881.

§ 9.1-502. Notice of charges; response; election to proceed under grievance procedure of local governing body

A. Before any dismissal, demotion, suspension without pay or transfer for punitive reasons may be imposed, the following rights shall be afforded:

1. The law-enforcement officer shall be notified in writing of all charges, the basis therefor, and the action which may be taken;

2. The law-enforcement officer shall be given an opportunity, within a reasonable time limit after the date of the written notice provided for above, to respond orally and in writing to the charges. The time limit shall be determined by the agency, but in no event shall it be less than five calendar days unless agreed to by the law-enforcement officer;

3. In making his response, the law-enforcement officer may be assisted by counsel at his own expense; and

4. The law-enforcement officer shall be given written notification of his right to initiate a grievance under the grievance procedure established by the local governing body pursuant to §§ [15.2-1506](#) and [15.2-1507](#). A copy of the local governing body's grievance procedure shall be provided to the law-enforcement officer upon his request.

B. A law-enforcement officer may proceed under either the local governing body's grievance procedure or the law-enforcement officer's procedural guarantees, but not both.

1978, c. 19, § 2.1-116.4; 1987, c. 461; 2001, c. [844](#).

§ 9.1-503. Personal assets of officers

No law-enforcement officer shall be required or requested to disclose any item of his property, income, assets, source of income, debts, or personal or domestic expenditures, including those of any member of his family or household, unless (i) such information is necessary in investigating a possible conflict of interest with respect to the performance of his official duties(ii) such disclosure is required by law, or (iii) such information is related to an investigation. Nothing in this section shall preclude an agency from requiring the law-enforcement officer to disclose any place of off-duty employment and where he may be contacted.

1978, c. 19, § 2.1-116.3; 2001, c. [844](#).

§ 9.1-504. Hearing; hearing panel recommendations

A. Whenever a law-enforcement officer is dismissed, demoted, suspended or transferred for punitive reasons, he may, within a reasonable amount of time following such action, as set by the agency, request a hearing. If such request is timely made, a hearing shall be held within a reasonable amount of time set by the agency. However, the hearing shall not be set later than fourteen calendar days following the date of request unless a later date is agreed to by the law-enforcement officer. At the hearing, the law-enforcement officer and his agency shall be afforded the opportunity to present evidence, examine and cross-examine witnesses. The law-enforcement officer shall also be given the opportunity to be represented by counsel at the hearing unless the officer and agency are afforded, by regulation, the right to counsel in a subsequent de novo hearing.

B. The hearing shall be conducted by a panel consisting of one member from within the agency selected by the grievant, one member from within the agency of equal rank of the grievant but no more than two ranks above appointed by the agency head, and a third member from within the agency to be selected by the other two members. In the event that such two members cannot agree upon their selection, the chief judge of the judicial circuit wherein the duty station of the grievant lies shall choose such third member. The hearing panel may, and on the request of either the law-enforcement officer or his agency shall, issue subpoenas requiring the testimony of witnesses who have refused or failed to appear at the hearing. The hearing panel shall rule on the admissibility of the evidence. A record shall be made of the hearing.

C. At the option of the agency, it may, in lieu of complying with the provisions of § 9.1-502, give the law-enforcement officer a statement, in writing, of the charges, the basis therefor, the action which may be taken, and provide a hearing as provided for in this section prior to dismissing, demoting, suspending or transferring for punitive reasons the law-enforcement officer.

D. The recommendations of the hearing panel, and the reasons therefor, shall be in writing and transmitted promptly to the law-enforcement officer or his attorney and to the chief executive officer of the law-enforcement agency. Such recommendations shall be advisory only, but shall be accorded significant weight.

1978, c. 19, §§ 2.1-116.5, 2.1-116.7; 1980, c. 191; 2001, c. 844.

§ 9.1-505. Immediate suspension

Nothing in this chapter shall prevent the immediate suspension without pay of any law-enforcement officer whose continued presence on the job is deemed to be a substantial and immediate threat to the welfare of his agency or the public, nor shall anything in this chapter prevent the suspension of a law-enforcement officer for refusing to obey a direct order issued in conformance with the agency's written and disseminated regulations. In such a case, the law-enforcement officer shall, upon request, be afforded the rights provided for under this chapter within a reasonable amount of time set by the agency.

1978, c. 19, § 2.1-116.6; 2001, c. 844.

§ 9.1-506. Informal counseling not prohibited

Nothing in this chapter shall be construed to prohibit the informal counseling of a law-enforcement officer by a supervisor in reference to a minor infraction of policy or procedure which does not result in disciplinary action being taken against the law-enforcement officer.

1978, c. 19, § 2.1-116.8; 2001, c. 844.

§ 9.1-507. Chapter accords minimum rights

The rights accorded law-enforcement officers in this chapter are minimum rights and all agencies shall adopt grievance procedures that are consistent with this chapter. However, an agency may provide for additional rights of law-enforcement officers in its grievance procedure.

1978, c. 19, § 2.1-116.9; 2001, c. 844.