

THE PROBLEM

When law enforcement agencies investigate officers for engaging in misconduct, officers of course are entitled to the same basic due process protections that other public employees receive. For example, when questioning an officer pursuant to the State's formal investigative procedures, agencies should give officers a general description of the officer conduct the agency is investigating and the questioning should take place at a reasonable hour, unless the seriousness of the investigation requires otherwise.

But state law—usually but not always enacted law enforcement officer bill of rights laws (“LEOBORS”)—and collective bargaining agreements often contain provisions that afford officers protections far beyond the protections other public employees receive. Many of these provisions seriously impede agencies from holding officers accountable for grave misconduct while doing very little to further due process values.

For example, many LEOBORs and collective bargaining provisions impose a mandatory waiting period anywhere from 24 hours to 30 days before agency supervisors may question an officer who has committed or witnessed misconduct. Such a provision can lead to evidence loss, memory lapses, and allows officers to coordinate exculpatory accounts.

Many agencies do not accept complaints against officers if the complaints are anonymous, unsworn, or submitted on an incorrect form.

THE SOLUTION

The statute eliminates common accountability-impeding provisions from state and local law, and prohibits localities from including them in collective bargaining agreements. It also bolsters accountability by requiring agencies to adopt, follow, and publish complaint policies that do not pose unreasonable hurdles on complainants.

The statute also furthers transparency by requiring that agencies and political subdivisions release the matrices agencies use to discipline officers and the collective bargaining agreements that set forth procedural protections for officers accused of misconduct.

WHAT THE STATUTE DOES

Eliminates the following provisions from both state laws and local collective bargaining agreements:

- Imposing a waiting period before a supervisor can informally question an officer following a use of force incident, unless the officer needs immediate medical care.

- Restricting the number of agency personnel who may be present or question an officer at a disciplinary interview or hearing.
- Permitting an officer who allegedly committed misconduct to choose adjudicators at the officer's disciplinary hearing.
- Requiring agencies to provide officers suspected of misconduct with access to evidence and witness statements related before agency supervisors can initially question an officer.
- Empowering a hearing board composed of rank-and-file officers—rather than a police chief—to decide which discipline, if any, to impose on an officer who engages in serious misconduct.
- Prohibiting agencies from investigating or disciplining officers for misconduct unless the investigation commences shortly after the misconduct occurred.

Requires clear policies for investigating complaints

The statute requires agencies to adopt and adhere to a publicly available complaint policy that includes the following requirements: The agency must (a) accept and process anonymous or unsworn complaints that otherwise comply with the agency's policies and procedures; (b) afford complainants an opportunity to cure any deficiency in their complaint; (c) retain all complaints filed and related investigatory materials as long as the officer is employed by agency, or for 20 years, whichever is longer; and (d) set forth protocols in policy for the investigation of a complaint and for information a complainant of the status of a complaint.

Regulates the public release of complaints and related records

The statute sets out clear rules for when complaints and related materials may be released and what may be redacted, ensuring the public has access to critical information while also protecting privacy interests and respecting ongoing investigations.

Promotes transparency around collective bargaining

Requires that agencies and political subdivisions make publicly available disciplinary matrices and collective bargaining agreements, and give the public notice and an opportunity to comment before an agency enters into a new collective bargaining agreement.

The Policing Project at NYU School of Law partners with communities and policy makers to enhance safety, democratic accountability, and transparency in policing. Our team of attorneys, advocates, and community organizers is ready to help you pass legislation to strengthen police accountability and reduce harm.

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