

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2920

BY DELEGATES DOYLE, HORNBUCKLE, S. BROWN,

PUSHKIN AND EVANS

[Introduced February 8, 2019; Referred
to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto two new
 2 articles, designated §15-2F-1, §15-2F-2, §15-2F-3, §15-2F-4 §15-2F-5, §15-2F-6, §15-
 3 2F-7 §15-2F-8, §15-2F-9 and §15-2F-10; and §15-2G-1, §15-2G-2, §15-2G-3, §15-2G-4,
 4 §15-2G-5, §15-2G-6, §15-2G-7, §15-2G-8, §15-2G-9, §15-2G-10, §15-2G-11, §15-2G-12
 5 and §15-2G-13, all relating to creating state and local law-enforcement review boards;
 6 members; complaint procedures; jurisdiction; disposition of complaint; final action;
 7 abrogation of rights; procedures for suspension and dismissal; procedural requirements;
 8 records and public disclosure; rules of procedure; and reports of the boards.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2F. STATE POLICE REVIEW BOARD.

§15-2F-1. Board created, members.

1 (a) The State Police review board is hereby created to provide a permanent statutory
 2 agency through which complaints lodged by members of the general public and State Police
 3 personnel regarding alleged acts of discourtesy and excessive force by State Police personnel
 4 are to be processed and evaluated.

5 (b) The board is composed of the following members or their designees:

6 (1) The Attorney General of West Virginia;

7 (2) The Superintendent of the West Virginia State Police;

8 (3) The executive director of the Human Rights Commission;

9 (4) The executive director of the West Virginia Prosecuting Attorneys Institute;

10 (5) The Director of Public Defender Services; and

11 (6) Two citizen members appointed by the Governor, who shall each serve for a term of
 12 two years. A vacancy in a citizen member position shall be filled in the manner of the original
 13 appointment for the remainder of the term. Citizen members may serve unlimited consecutive
 14 terms.

15 (c) In all matters where a quorum is present, a majority vote of the board prevails. A
16 quorum consists of five members.

17 (d) The board shall meet in executive session as often as necessary to perform its
18 functions and duties, but it shall meet at least once a month.

19 (e) In all matters a majority vote of the members present prevails.

§15-2F-2. Complaint procedures.

1 (a) Any person who claims to have been subjected to, or any person who claims to have
2 personal knowledge of an act or acts of discourtesy, use of excessive force or injury resulting
3 from excessive force caused by State Police personnel, may make a complaint of the conduct at
4 the office of the internal affairs division of the State Police or at any State Police station.

5 (b) The complaint shall be reduced to writing on a special police review board form serially
6 numbered, signed by the complainant and notarized before a duly authorized notary public.

7 (c) One copy of the completed form shall be retained by the recipient of the complaint and
8 a copy given to the complainant. A copy shall be mailed within 48 hours to the internal affairs
9 division and to the secretary of the board.

10 (d) The secretary of the board shall assign a consecutive number to each complaint and,
11 within 48 hours, shall mail a copy to each member of the board. The secretary shall also maintain
12 on file a record of each complaint.

13 (e) The internal affairs division shall make a comprehensive investigation of each
14 complaint and submit its report thereof to the board within 90 days from the date of the complaint.

15 (f) The board shall review the internal affairs division's report and submit in writing to the
16 Superintendent of State Police within 30 days from receipt thereof, a statement of its findings and
17 recommendations as provided under section three of this article. The superintendent shall, within
18 30 days of receipt of the findings and recommendations of the board, forward to the board a
19 statement of his or her disposition in each case. Concurrent with this, the superintendent shall
20 also forward a copy of the board's recommendation and the superintendent's statement of

21 disposition to the complainant and respondent police personnel.

§15-2F-3. Jurisdiction and disposition of complaint.

1 (a) Jurisdiction of the board shall extend only to complaints against State Police personnel
2 with respect to discourtesy and use of excessive force as defined by rules of the State Police.

3 (b) Upon review of the investigative report of each case, the board shall make forthwith
4 any one of the following four recommendations to the superintendent:

5 (1) Sustain the complaint and approve, disapprove or modify the proposed internal affairs
6 division's action against the police personnel;

7 (2) Dismiss the complaint because of lack or insufficiency of evidence;

8 (3) Exonerate the police personnel because of the complainant's failure to prove his or her
9 case by clear and convincing evidence; or

10 (4) Remand the case for further investigation to the internal affairs division or to the West
11 Virginia State Police.

12 (c) The board may request the complainant, witnesses and the police department
13 personnel involved in a particular complaint to submit voluntarily to a polygraph test or to appear
14 voluntarily before the board.

§15-2F-4. Final action.

1 The superintendent has final decision-making responsibility for the appropriate disciplinary
2 action in each case, but no final action may be taken until the recommendation of the board has
3 been reviewed

§15-2F-5. Rights not abrogated.

1 Nothing contained in this article may abrogate any constitutional, statutory or common law
2 right of police personnel against whom a complaint is filed, nor of the complainants, investigators
3 or witnesses who participate in the complaint procedure.

§15-2F-6. Suspension and dismissal procedures not changed.

1 This procedure does not affect or change the methods and procedures for suspension or

2 dismissal of members of the State Police.

§15-2F-7. Procedural requirements.

1 Police personnel may not be penalized or affected adversely in any way as a result of the
2 procedure set forth in this article without having been first afforded proper written notice of charges
3 against him or her and the right to a hearing before the grievance procedure recommendation
4 board.

§15-2F-8. Records; public disclosure.

1 Records of the board containing the names or identification of police personnel,
2 complainants, investigators or witnesses may not be disclosed or released to the general public.

§15-2F-9. Rules of procedure.

1 The board may promulgate rules in accordance with §29A-3-1 et seq. of this code to carry
2 out the provisions of this article.

§15-2F-10. Semiannual report.

1 The board shall prepare and publish a semiannual statistical and analytical report
2 regarding the complaints processed under this article.

ARTICLE 2G. LOCAL LAW-ENFORCEMENT REVIEW BOARDS.

§15-2G-1. Local law-enforcement review boards authorized and required to be in place in
four years.

1 The governing body of every municipality and the county commission of every county is
2 hereby authorized to create and establish a local police or deputy sheriff review board and are
3 required to have a local police or deputy sheriff review board in place no later than four years after
4 the effective date of this article.

§15-2G-2. Purpose of local police review boards.

1 The purpose of local police or deputy sheriff review boards is the same as the purpose of
2 the State Police review board created by §15-2F-1 et seq. of this code: To review allegations of
3 misconduct or use of excessive force by local law-enforcement personnel, including deputy

4 sheriffs. The local review boards may operate in cooperation with the State Police review board
 5 created by §15-2F-1 et seq. of this legislation. The jurisdiction of local review boards extends to
 6 complaints against local law-enforcement or deputy sheriff personnel with respect to misconduct
 7 and use of excessive force as defined by rules promulgated by the local law-enforcement
 8 agencies or sheriff's department. If the local law-enforcement agency or sheriff's department does
 9 not have such rules in operation of the effective date of this article, then the rules of the State
 10 Police will be applied.

11 (a) Local review boards may adopt the complaint procedures set out in §15-2F-1 et seq.
 12 of this code for the State Police review board.

13 (b) The local review board, after review of the investigative report of each case, shall make
 14 recommendations to the chief law-enforcement officer in the appropriate jurisdiction.

15 (c) The chief law-enforcement officer shall either:

16 (1) Sustain the complaint and take whatever action is required under existing internal
 17 affairs procedures; or

18 (2) Dismiss the complaint because of lack of sufficiency of evidence; or

19 (3) Exonerate the law-enforcement personnel because of the complainant's failure to
 20 prove his or her case by clear and convincing evidence; or

21 (4) Remand the case to the appropriate internal affairs office for further investigation.

§15-2G-3. Review boards shall be established by political entities.

1 Local law-enforcement review boards may be established by a municipal corporation, a
 2 county commission or by a combination of municipalities and a combination of municipalities and
 3 counties or a combination of counties.

§15-2G-4. Board members.

1 Local law-enforcement review boards are composed of the following members or their
 2 designees:

3 (1) The prosecuting attorney of the county in which the board is located;

4 (2) The chief law-enforcement officer or sheriff; and

5 (3) Four citizen members, two each appointed by the governing body of the municipality
6 and county commission, who shall each serve for a term of two years. If the local review board is
7 representative of more than one municipality or more than one county, a citizen member must be
8 appointed from each municipal member or each county member, or both municipal or county
9 member, as the case may be. A vacancy in a citizen member position shall be filled in the manner
10 of the original appointment for the remainder of the term. Citizen members may serve unlimited
11 consecutive terms.

12 (a) A quorum consists of a simple majority of the members present. In all matters where
13 a quorum is present, a majority vote of the board prevails.

14 (b) The board may meet in executive session as often as necessary to perform its
15 functions and duties, but it must meet at least once a month.

16 (c) In all matters a majority vote of the members present prevails.

§15-2G-5. Final action.

1 The chief law-enforcement officer or sheriff has final decision-making responsibility for the
2 appropriate disciplinary action in each case, but no final action may be taken until the
3 recommendation of the local review board has been reviewed.

§15-2G-6. Rights not abrogated.

1 Nothing contained in this article may abrogate any constitutional, statutory or common law
2 right of local law-enforcement or deputy sheriff personnel against whom a complaint is filed, nor
3 of the complainants, investigators or witnesses who participate in the complaint procedure.

§15-2G-7. Suspension and dismissal procedures not changed.

1 This procedure does not affect or change the methods and procedures for suspension or
2 dismissal of members of any local law-enforcement officer or deputy sheriff.

§15-2G-8. Procedural requirements.

1 Local law-enforcement or deputy sheriff personnel may not be penalized or affected

2 adversely in any way as a result of the procedure set forth in this article without having been first
 3 afforded proper written notice of charges against him or her and the right to a hearing before a
 4 grievance procedure recommendation board.

§15-2G-9. Records; public disclosure.

1 Records of the local review boards containing the names or identification of local law-
 2 enforcement or deputy sheriff personnel, complainants, investigators or witnesses may not be
 3 disclosed or released to the general public.

§15-2G-10. Rules of procedure.

1 The local review boards may promulgate rules in accordance with §29A-3-1 et seq. of this
 2 code to carry out the provisions of this article.

§15-2G-11. Semiannual report.

1 The local review boards must prepare and publish a semiannual statistical and analytical
 2 report regarding the complaints processed under this article.

§15-2G-12. Demonstration projects.

1 During the first two years after enactment, municipalities or counties may submit proposals
 2 of demonstration projects. These projects are for the purpose of demonstrating how municipalities
 3 and counties can respond to this legislation as individual municipal or county entities or as a
 4 consortium of entities as provided for in §15-2G-2 of this code.

5 (a) There is hereby appropriated \$175,000 for three projects in the amount of \$100,000,
 6 \$50,000 and \$25,000, respectively.

7 (b) These projects will demonstrate how to establish and maintain review boards in a large
 8 municipality or consortium of municipalities or counties, a medium sized municipality or
 9 consortium and a small municipality.

10 (c) Proposals are due no later than nine months after the effective date of this article.

§15-2G-13. Demonstration project reports.

1 Reports of demonstration projects are due no later than two years after the effective date

2 of this article and will be used to evaluate this article and to propose amendments or modifications.

NOTE: The purpose of this bill is to create a police review board for the State Police and local review boards for local law-enforcement officers and deputy sheriffs.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.