

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2865

FISCAL
NOTE

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[Introduced March 03, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §29B-1-1, §29B-1-2, §29B-1-3, §29B-1-4, §29B-1-5, §29B-1-6, §29B-1-7,
 3 §29B-1-8, §29B-1-9, §29B-1-10, §29B-1-11, §29B-1-12, and §29B-1-13, all relating to
 4 creating a Law-Enforcement Officers' Bill of Rights; providing definitions; general rights of
 5 officers; general procedure in investigation or interrogation by a law-enforcement agency
 6 of a law-enforcement officer; right to hearing by a hearing board; disposition of
 7 administrative action; judicial review expungement of record of formal complaint; summary
 8 punishment; emergency suspension; and misdemeanor offense for false statement,
 9 report, or complaint, with penalty.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. LAW-ENFORCEMENT OFFICERS' BILL OF RIGHTS.

§29B-1-1. Definitions.

1 The following words have the meanings indicated.

2 "Chief" means the head of a law-enforcement agency and includes the officer designated
 3 by the head of a law-enforcement agency.

4 "Hearing" means a proceeding during an investigation conducted by a hearing board to
 5 take testimony or receive other evidence. It does not include an interrogation at which no
 6 testimony is taken under oath.

7 "Hearing board" means a board that is authorized by the chief to hold a hearing on a
 8 complaint against a law-enforcement officer.

9 "Law-enforcement officer" means an individual who:

10 (1) In an official capacity is authorized by law to make arrests; and

11 (2) Is a member of a law-enforcement agency in this state, including the State Police. It
 12 does not include an individual who serves at the pleasure of the appointing authority of a county;
 13 the police chief of a municipal corporation; or an officer who is in probationary status on initial
 14 entry into the law-enforcement agency except if an allegation of brutality in the execution of the

15 officer's duties is made.

16 (3) Is any duly authorized member of a law-enforcement agency who is authorized to
 17 maintain public peace and order, prevent and detect crime, make arrests, and enforce the laws
 18 of the state or any county or municipality thereof, other than parking ordinances, and includes
 19 those persons employed as campus police officers at state institutions of higher education in
 20 accordance with the provisions of §18B-4-5 of this code, persons employed as hospital police
 21 officers in accordance with the provisions of §16-5B-19 of this code, and persons employed by
 22 the Public Service Commission as motor carrier inspectors and weight-enforcement officers
 23 charged with enforcing commercial motor vehicle safety and weight restriction laws, although
 24 those institutions and agencies may not be considered law-enforcement agencies. The term also
 25 includes those persons employed as county litter control officers charged with enforcing litter laws:
 26 Provided, That those persons have been trained and certified as law-enforcement officers and
 27 that certification is currently active. The term also includes those persons employed as rangers
 28 by resort area districts in accordance with the provisions of §7-25-23 of this code, although no
 29 resort area district may be considered a law-enforcement agency: Provided, however, That the
 30 subject rangers shall pay the tuition and costs of training. As used in this article, the term "law-
 31 enforcement officer" does not apply to the chief executive of any West Virginia law-enforcement
 32 agency or any watchman or special Natural Resources police officer.

§29B-1-2. Effect of article.

1 (a) Conflicting law superseded.- Except for the administrative hearing process under this
 2 article that relates to the certification enforcement power of the Police Training Commission, this
 3 article supersedes any other law of the state, a county, or a municipal corporation that conflicts
 4 with this article

5 (b) Preemption of local law.- Any local law is preempted by the subject and material of this
 6 article.

7 (c) Authority of chief not limited.- This article does not limit the authority of the chief to

8 regulate the competent and efficient operation and management of a law-enforcement agency by
9 any reasonable means including transfer and reassignment if:

- 10 (1) That action is not punitive in nature; and
- 11 (2) The chief determines that action to be in the best interests of the internal management
12 of the law-enforcement agency.

§29B-1-3. Rights of officers generally.

1 (a) Right to engage in political activity.-

2 (1) Subject to subdivision (2) of this subsection, a law-enforcement officer has the same
3 rights to engage in political activity as a state employee.

4 (2) This right to engage in political activity does not apply when the law-enforcement officer
5 is on duty or acting in an official capacity.

6 (b) Regulation of secondary employment.- A law-enforcement agency:

7 (1) May not prohibit secondary employment by law-enforcement officers; but

8 (2) May adopt reasonable rule that relate to secondary employment by law-enforcement
9 officers.

10 (c) Disclosure of property, income, and other information.- A law-enforcement officer may
11 not be required or requested to disclose an item of the law-enforcement officer’s property, income,
12 assets, source of income, debts, or personal or domestic expenditures, including those of a
13 member of the law-enforcement officer’s family or household, unless:

14 (1) The information is necessary to investigate a possible conflict of interest with respect
15 to the performance of the law-enforcement officer’s official duties; or

16 (2) The disclosure is required by federal or state law.

17 (d) Retaliation.- (1) A law-enforcement officer may not be discharged, disciplined,
18 demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against in
19 regard to the law-enforcement officer’s employment or be threatened with that treatment because
20 the law-enforcement officer:

- 21 (A) Has exercised or demanded the rights granted by this article;
- 22 (B) Has lawfully exercised constitutional rights; or
- 23 (C) Has disclosed information that evidences:
- 24 (i) Gross mismanagement;
- 25 (ii) A gross waste of government resources;
- 26 (iii) A substantial and specific danger to public health or safety; or
- 27 (iv) A violation of law committed by another law-enforcement officer.
- 28 (e) Right to sue.- A statute may not abridge, and a law-enforcement agency may not adopt
- 29 a rule that prohibits the right of a law-enforcement officer to bring suit that arises out of the law-
- 30 enforcement officer’s duties as a law-enforcement officer.
- 31 (f) Waiver of rights.- A law-enforcement officer may waive in writing any or all rights
- 32 granted by this article.

§29B-1-4. Investigation or interrogation of an officer.

- 1 (a) In general.- The investigation or interrogation by a law-enforcement agency of a law-
- 2 enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal shall
- 3 be conducted in accordance with this section.
- 4 (b) Interrogating or investigating officer.- For purposes of this section, the investigating
- 5 officer or interrogating officer shall be:
- 6 (1) A sworn law-enforcement officer; or
- 7 (2) If requested by the Governor, the Attorney General or Attorney General’s designee.
- 8 (c) Complaint that alleges brutality.- (1) A complaint against a law-enforcement officer that
- 9 alleges brutality in the execution of the law-enforcement officer’s duties may not be investigated
- 10 unless the complaint is signed and sworn to, under penalty of perjury, by:
- 11 (A) The aggrieved individual;
- 12 (B) A member of the aggrieved individual’s immediate family;
- 13 (C) An individual with firsthand knowledge obtained because the individual was present at

14 and observed the alleged incident; or

15 (i) Was present at and observed the alleged incident; or

16 (ii) Has a video recording of the incident that, to the best of the individual's knowledge, is
17 unaltered; or

18 (iii) The parent or guardian of the minor child, if the alleged incident involves a minor child.

19 Unless a complaint is filed within 366 days after the alleged brutality, an investigation that may
20 lead to disciplinary action under this article for brutality may not be initiated and an action may not
21 be taken.

22 (d) Disclosures to law-enforcement officer under investigation.- (1) The law-enforcement
23 officer under investigation shall be informed of the name, rank, and command of:

24 (A) The law-enforcement officer in charge of the investigation;

25 (B) The interrogating officer; and

26 (C) Each individual present during an interrogation.

27 (2) Before an interrogation, the law-enforcement officer under investigation shall be
28 informed in writing of the nature of the investigation.

29 (e) Disclosures to law-enforcement officer under arrest.- If the law-enforcement officer
30 under interrogation is under arrest, or is likely to be placed under arrest as a result of the
31 interrogation, the law-enforcement officer shall be informed completely of all of the law-
32 enforcement officer's rights before the interrogation begins.

33 (f) Time of interrogation.- Unless the seriousness of the investigation is of a degree that
34 an immediate interrogation is required, the interrogation shall be conducted at a reasonable hour,
35 preferably when the law-enforcement officer is on duty.

36 (g) Place of interrogation.- (1) The interrogation shall take place:

37 (A) At the office of the command of the investigating officer or at the office of the local
38 precinct or police unit in which the incident allegedly occurred, as designated by the investigating
39 officer; or

40 (B) At another reasonable and appropriate place.

41 (2) The law-enforcement officer under investigation may waive the right described in
42 paragraph (1)(A) of this subsection.

43 (h) Conduct of interrogation.- (1) All questions directed to the law-enforcement officer
44 under interrogation shall be asked by and through one interrogating officer during any one session
45 of interrogation consistent with this section.

46 (2) Each session of interrogation shall:

47 (A) Be for a reasonable period; and

48 (B) Allow for personal necessities and rest periods as reasonably necessary.

49 (i) Threat of transfer, dismissal, or disciplinary action prohibited.- The law-enforcement
50 officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action.

51 (j) Right to counsel.-

52 (1) (A) On request, the law-enforcement officer under interrogation has the right to be
53 represented by counsel or another responsible representative of the law-enforcement officer's
54 choice who shall be present and available for consultation at all times during the interrogation.

55 (B) The law-enforcement officer may waive the right described in paragraph (1)(A) of this
56 subsection.

57 (2) (A) The interrogation shall be suspended for a period not exceeding five days until
58 representation is obtained.

59 (B) Within that five business day period, the chief for good cause shown may extend the
60 period for obtaining representation.

61 (3) During the interrogation, the law-enforcement officer's counsel or representative may:

62 (A) Request a recess at any time to consult with the law-enforcement officer;

63 (B) Object to any question posed; and

64 (C) State on the record outside the presence of the law-enforcement officer the reason for
65 the objection.

66 (k) Record of interrogation.- (1) A complete record shall be kept of the entire interrogation,
67 including all recess periods, of the law-enforcement officer.

68 (2) The record may be written, taped, or transcribed.

69 (3) On completion of the investigation, and on request of the law-enforcement officer under
70 investigation or the law-enforcement officer's counsel or representative, a copy of the record of
71 the interrogation shall be made available at least 10 days before a hearing.

72 (l) Tests and examinations - In general.- (1) The law-enforcement agency may order the
73 law-enforcement officer under investigation to submit to blood alcohol tests, blood, breath, or urine
74 tests for controlled dangerous substances, polygraph examinations, or interrogations that
75 specifically relate to the subject matter of the investigation.

76 (2) If the law-enforcement agency orders the law-enforcement officer to submit to a test,
77 examination, or interrogation described in paragraph (1) of this subsection and the law-
78 enforcement officer refuses to do so, the law-enforcement agency may commence an action that
79 may lead to a punitive measure as a result of the refusal.

80 (3) If the law-enforcement agency orders the law-enforcement officer to submit to a test,
81 examination, or interrogation described in paragraph (1) of this subsection, the results of the test,
82 examination, or interrogation are not admissible or discoverable in a criminal proceeding against
83 the law-enforcement officer.

84 (m) Tests and examinations - Polygraph examinations.- (1) If the law-enforcement agency
85 orders the law-enforcement officer to submit to a polygraph examination, the results of the
86 polygraph examination may not be used as evidence in an administrative hearing unless the law-
87 enforcement agency and the law-enforcement officer agree to the admission of the results.

88 (2) The law-enforcement officer's counsel or representative need not be present during
89 the actual administration of a polygraph examination by a certified polygraph examiner if:

90 (A) The questions to be asked are reviewed with the law-enforcement officer or the
91 counsel or representative before the administration of the examination;

92 (B) The counsel or representative is allowed to observe the administration of the
93 examination; and

94 (C) A copy of the final report of the examination by the certified polygraph examiner is
95 made available to the law-enforcement officer or the counsel or representative within a reasonable
96 time, not exceeding 10 days, after completion of the examination.

97 (n) Information provided on completion of investigation.- (1) On completion of an
98 investigation and at least 10 days before a hearing, the law-enforcement officer under
99 investigation shall be:

100 (A) Notified of the name of each witness and of each charge and specification against the
101 law-enforcement officer; and

102 (B) Provided with a copy of the investigatory file and any exculpatory information, if the
103 law-enforcement officer and the law-enforcement officer's representative agree to: (i) Execute a
104 confidentiality agreement with the law-enforcement agency not to disclose any material contained
105 in the investigatory file and exculpatory information for any purpose other than to defend the law-
106 enforcement officer; and

107 (ii) Pay a reasonable charge for the cost of reproducing the material.

108 (2) The law-enforcement agency may exclude from the exculpatory information provided
109 to a law-enforcement officer under this subsection:

110 (A) The identity of confidential sources;

111 (B) Nonexculpatory information; and

112 (C) Recommendations as to charges, disposition, or punishment.

113 (o) Adverse material.- (1) The law-enforcement agency may not insert adverse material
114 into a file of the law-enforcement officer, except the file of the internal investigation or the
115 intelligence division, unless the law-enforcement officer has an opportunity to review, sign, receive
116 a copy of, and comment in writing on the adverse material.

117 (2) The law-enforcement officer may waive the right described in this section.

§29B-1-5. Application for show cause order.

1 (a) In general.- A law-enforcement officer who is denied a right granted by this article may
2 apply to the circuit court of the county where the law-enforcement officer is regularly employed
3 for an order that directs the law-enforcement agency to show cause why the right should not be
4 granted.

5 (b) Conditions.- The law-enforcement officer may apply for the show cause order:

6 (1) Either individually or through the law-enforcement officer’s certified or recognized
7 employee organization; and

8 (2) At any time prior to the beginning of a hearing by the hearing board.

§29B-1-6. Limitation on administrative charges.

1 (a) In general.- Subject to subsection (b) of this section, a law enforcement agency may
2 not bring administrative charges against a law-enforcement officer unless the agency files the
3 charges within one year after the act that gives rise to the charges comes to the attention of the
4 appropriate law-enforcement agency official.

5 (b) Exception.- The one-year limitation of subsection (a) of this section does not apply to
6 charges that relate to criminal activity or excessive force.

§29B-1-7. Hearing by a hearing board.

1 (a) Right to hearing.- (1) Except as provided in paragraph (2) of this subsection and §29B-
2 1-11 of this code, if the investigation or interrogation of a law-enforcement officer results in a
3 recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that
4 is considered punitive, the law-enforcement officer is entitled to a hearing on the issues by a
5 hearing board before the law-enforcement agency takes that action.

6 (2) A law-enforcement officer who has been convicted of a felony is not entitled to a
7 hearing under this section.

8 (b) Notice of hearing.- (1) The law-enforcement agency shall give notice to the law-
9 enforcement officer of the right to a hearing by a hearing board under this section.

10 (2) The notice required under this subsection shall state the time and place of the hearing
11 and the issues involved.

12 (c) Membership of hearing board.- (1) Except as provided in paragraph (5) of this
13 subsection and in §29B-1-11 of this code, the hearing board authorized under this section shall
14 consist of at least three members who:

15 (A) Are appointed by the chief and chosen from law-enforcement officers within that law-
16 enforcement agency, or from law-enforcement officers of another law-enforcement agency with
17 the approval of the chief of the other agency; and

18 (B) Have had no part in the investigation or interrogation of the law-enforcement officer.

19 (2) At least one member of the hearing board shall be of the same rank as the law-
20 enforcement officer against whom the complaint is filed.

21 (3) (A) A chief may appoint, as a nonvoting member of the hearing board, one member of
22 the public who has received training administered by The Law-Enforcement Professional
23 Standards Subcommittee of the Governor's Committee on Crime, Delinquency and Correction as
24 provided in §30-29-3 of this code.

25 (B) If authorized by local law, a hearing board formed under this subsection may include
26 up to two voting or nonvoting members of the public who have received training administered by
27 The Law-Enforcement Professional Standards Subcommittee relating to police procedures.

28 (4) (A) If the chief is the law-enforcement officer under investigation, the chief of another
29 law-enforcement agency in the state shall function as the law-enforcement officer of the same
30 rank on the hearing board.

31 (B) If the chief of a state law-enforcement agency is under investigation, the Governor shall
32 appoint the chief of another law-enforcement agency to function as the law-enforcement officer
33 of the same rank on the hearing board.

34 (C) If the chief of a law-enforcement agency of a county or municipal corporation is under
35 investigation, the official authorized to appoint the chief's successor shall appoint the chief of

36 another law-enforcement agency to function as the law-enforcement officer of the same rank on
37 the hearing board.

38 (D) If the chief of a state law-enforcement agency or the chief of a law-enforcement agency
39 of a county or municipal corporation is under investigation, the official authorized to appoint the
40 chief's successor, or that official's designee, shall function as the chief for purposes of this article.

41 (5) (A) (i) A law-enforcement agency or the agency's superior governmental authority that
42 has recognized and certified an exclusive collective bargaining representative may negotiate with
43 the representative an alternative method of forming a hearing board.

44 (ii). A hearing board formed under this section may include up to two voting or nonvoting
45 members of the public, appointed by the chief, who have received training administered by the
46 Law-Enforcement Professional Standards Subcommittee.

47 (ii) A law-enforcement officer may elect the alternative method of forming a hearing board
48 if:

49 (I) The law-enforcement officer works in a law-enforcement agency described in
50 subparagraph (i) of this paragraph; and

51 (II) The law-enforcement officer is included in the collective bargaining unit.

52 (iii) The law-enforcement agency shall notify the law-enforcement officer in writing before
53 a hearing board is formed that the law-enforcement officer may elect an alternative method of
54 forming a hearing board if one has been negotiated under this paragraph.

55 (iv) If the law-enforcement officer elects the alternative method, that method shall be used
56 to form the hearing board.

57 (v) An agency or exclusive collective bargaining representative may not require a law
58 enforcement officer to elect an alternative method of forming a hearing board.

59 (vi) If the law-enforcement officer has been offered summary punishment, an alternative
60 method of forming a hearing board may not be used.

61 (vii) If authorized by local law, this paragraph is subject to binding arbitration.

62 (d) Subpoenas.- (1) In connection with a disciplinary hearing, the chief or hearing board
63 may issue subpoenas to compel the attendance and testimony of witnesses and the production
64 of books, papers, records, and documents as relevant or necessary.

65 (2) The subpoenas may be served without cost in accordance with the West Rules of Civil
66 Procedure that relate to service of process issued by a court.

67 (3) Each party may request the chief or hearing board to issue a subpoena or order under
68 this article.

69 (4) In case of disobedience or refusal to obey a subpoena served under this subsection,
70 the chief or hearing board may apply without cost to the circuit court of a county where the
71 subpoenaed party resides or conducts business, for an order to compel the attendance and
72 testimony of the witness or the production of the books, papers, records, and documents.

73 (5) On a finding that the attendance and testimony of the witness or the production of the
74 books, papers, records, and documents is relevant or necessary:

75 (i) The court may issue without cost an order that requires the attendance and testimony
76 of witnesses or the production of books, papers, records, and documents; and

77 (ii) Failure to obey the order may be punished by the court as contempt.

78 (e) Conduct of hearing.- (1) The hearing shall be:

79 (i) Conducted by a hearing board; and (ii) open to the public, unless the chief finds a hearing
80 must be closed for good cause, including to protect a confidential informant, an undercover officer,
81 or a child witness.

82 (2) The hearing board shall give the law-enforcement agency and law-enforcement officer
83 ample opportunity to present evidence and argument about the issues involved.

84 (3) The law-enforcement agency and law-enforcement officer may be represented by
85 counsel.

86 (4) Each party may cross-examine witnesses who testify, and each party may submit
87 rebuttal evidence.

88 (f) Evidence.- (1) Evidence with probative value that is commonly accepted by reasonable
89 and prudent individuals in the conduct of their affairs is admissible and shall be given probative
90 effect.

91 (2) The hearing board shall give effect to the rules of privilege recognized by law and shall
92 exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

93 (3) Each record or document that a party desires to use shall be offered and made a part
94 of the record.

95 (4) Documentary evidence may be received in the form of copies or excerpts, or by
96 incorporation by reference.

97 (g) Judicial notice.- (1) The hearing board may take notice of:

98 (i) Judicially cognizable facts; and

99 (ii) General, technical, or scientific facts within its specialized knowledge.

100 (2) The hearing board shall:

101 (i) Notify each party of the facts so noticed either before or during the hearing, or by
102 reference in preliminary reports or otherwise; and

103 (ii) Give each party an opportunity and reasonable time to contest the facts so noticed.

104 (3) The hearing board may utilize its experience, technical competence, and specialized
105 knowledge in the evaluation of the evidence presented.

106 (h) Oaths.- (1) With respect to the subject of a hearing conducted under this article, the
107 chief shall administer oaths or affirmations and examine individuals under oath.

108 (2) In connection with a disciplinary hearing, the chief or a hearing board may administer
109 oaths.

110 (i) Witness fees and expenses.- (1) Witness fees and mileage, if claimed, shall be allowed
111 the same as for testimony in a circuit court.

112 (2) Witness fees, mileage, and the actual expenses necessarily incurred in securing the
113 attendance of witnesses and their testimony shall be itemized and paid by the law-enforcement

114 agency.

115 (j) Official record.- An official record, including testimony and exhibits, shall be kept of the
116 hearing.

§29B-1-8. Disposition of administrative action.

1 (a) In general.- (1) A decision, order, or action taken as a result of a hearing under §29B-
2 1-7 of this code, shall be in writing and accompanied by findings of fact.

3 (2) The findings of fact shall consist of a concise statement on each issue in the case.

4 (3) A finding of not guilty terminates the action.

5 (4) If the hearing board makes a finding of guilt, the hearing board shall:

6 (i) Reconvene the hearing;

7 (ii) Receive evidence; and

8 (iii) Consider the law-enforcement officer's past job performance and other relevant
9 information as factors before making recommendations to the chief.

10 (5) A copy of the decision or order, findings of fact, conclusions, and written
11 recommendations for action shall be delivered or mailed promptly to:

12 (i) The law-enforcement officer or the law-enforcement officer's counsel or representative
13 of record; and

14 (ii) The chief.

15 (b) Recommendation of penalty.- (1) After a disciplinary hearing and a finding of guilt, the
16 hearing board may recommend the penalty it considers appropriate under the circumstances,
17 including demotion, dismissal, transfer, loss of pay, reassignment, or other similar action that is
18 considered punitive.

19 (2) The recommendation of a penalty shall be in writing.

20 (c) Final decision of hearing board.- (1) Notwithstanding any other provision of this article,
21 the decision of the hearing board as to findings of fact and any penalty is final if:

22 (i) A chief is an eyewitness to the incident under investigation; or

23 (ii) A law-enforcement agency or the agency's superior governmental authority has agreed
24 with an exclusive collective bargaining representative recognized or certified under applicable law
25 that the decision is final.

26 (2) The decision of the hearing board then may be appealed in accordance with §29B-1-
27 9 of this code.

28 (3) If authorized by local law, paragraph (1)(ii) of this subsection is subject to binding
29 arbitration.

30 (d) Review by chief and final order.-

31 (1) Within 30 days after receipt of the recommendations of the hearing board, the chief
32 shall:

33 (A) Review the findings, conclusions, and recommendations of the hearing board; and

34 (B) Issue a final order.

35 (2) The final order and decision of the chief is binding and then may be appealed in
36 accordance with §28B-1-9 of this code.

37 (3) The recommendation of a penalty by the hearing board is not binding on the chief.

38 (4) The chief shall consider the law-enforcement officer's past job performance as a factor
39 before imposing a penalty.

40 (5) The chief may increase the recommended penalty of the hearing board only if the chief
41 personally:

42 (A) Reviews the entire record of the proceedings of the hearing board;

43 (B) Meets with the law-enforcement officer and allows the law-enforcement officer to be
44 heard on the record;

45 (C) Discloses and provides in writing to the law-enforcement officer, at least 10 days
46 before the meeting, any oral or written communication not included in the record of the hearing
47 board on which the decision to consider increasing the penalty is wholly or partly based; and

48 (D) States on the record the substantial evidence relied on to support the increase of the

49 recommended penalty.

§29B-1-9. Judicial review.

1 An appeal from a decision made under §29B-1-8 of this code shall be taken to the circuit
2 court of the county in which the law-enforcement officer is employed.

§29B-1-10. Expungement of record of formal complaint.

1 (a) In general.- On written request, a law-enforcement officer may have expunged from
2 any file the record of a formal complaint made against the law-enforcement officer if:

3 (1) The law-enforcement agency that investigated the complaint:

4 (i) Exonerated the law-enforcement officer of all charges in the complaint; or

5 (ii) Determined that the charges were not sustained or unfounded; or

6 (iii) A hearing board acquitted the law-enforcement officer, dismissed the action, or made
7 a finding of not guilty; and

8 (2) At least three years have passed since the final disposition by the law-enforcement
9 agency or hearing board.

10 (b) Admissibility of formal complaint.- Evidence of a formal complaint against a law-
11 enforcement officer is not admissible in an administrative or judicial proceeding if the complaint
12 resulted in an outcome listed in subsection (a)(1) of this section.

§29B-1-11. Summary punishment.

1 (a) Authorized.- This article does not prohibit summary punishment by higher ranking law-
2 enforcement officers as designated by the chief.

3 (b) Imposition.- (1) Summary punishment may be imposed for minor violations of law-
4 enforcement agency rules and regulations if:

5 (A) The facts that constitute the minor violation are not in dispute;

6 (B) The law-enforcement officer waives the hearing provided under this article; and

7 (C) The law-enforcement officer accepts the punishment imposed by the highest ranking
8 law-enforcement officer, or individual acting in that capacity, of the unit to which the law-

9 enforcement officer is attached.

10 (2) Summary punishment imposed under this subsection may not exceed suspension of
11 three days without pay or a fine of \$150.

12 (c) Refusal.- (1) If a law-enforcement officer is offered summary punishment in accordance
13 with subsection (b) of this section and refuses:

14 (A) The chief may convene a hearing board of one or more members; and

15 (B) The hearing board has only the authority to recommend the sanctions provided in this
16 section for summary punishment.

17 (2) If a single-member hearing board is convened:

18 (A) The member need not be of the same rank as the law-enforcement officer; but

19 (B) All other provisions of this article apply.

§29B-1-12. Emergency suspension.

1 (a) Authorized.- This article does not prohibit emergency suspension by higher ranking
2 law-enforcement officers as designated by the chief.

3 (b) Imposition - With pay.- (1) The chief may impose emergency suspension with pay if it
4 appears that the action is in the best interest of the public and the law-enforcement agency.

5 (2) If the law-enforcement officer is suspended with pay, the chief may suspend the police
6 powers of the law-enforcement officer and reassign the law-enforcement officer to restricted
7 duties pending:

8 (A) A determination by a court with respect to a criminal violation; or

9 (B) A final determination by a hearing board with respect to a law-enforcement agency
10 violation.

11 (3) A law-enforcement officer who is suspended under this subsection is entitled to a
12 prompt hearing.

13 (c) Same - Without pay.- (1) If a law-enforcement officer is charged with a felony, the chief
14 may impose an emergency suspension of police powers without pay.

15 (2) A law-enforcement officer who is suspended under paragraph (1) of this subsection is
16 entitled to a prompt hearing.

§29B-1-13. False statement, report, or complaint.

1 A person may not knowingly make a false statement, report, or complaint during an
2 investigation or proceeding conducted under this article. Any person who violates this section is
3 guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more
4 than \$200, or confined in jail for five days.

NOTE: The purpose of this bill is to guarantee certain procedural safeguards to law-enforcement officers during any investigation or interrogation or subsequent hearing that could lead to disciplinary action, demotion, or dismissal.

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