

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3211

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YOUNG, GRIFFITH AND FLESICHAUER

[Introduced March 16, 2021; Referred to the Committee on
the Judiciary then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §15-2F-1, §15-2F-2, §15-2F-3, §15-2F-4 §15-2F-5, §15-2F-6, §15-2F-7 §15-
 3 2F-8, §15-2F-9 and §15-2F-10; creating an Independent Police Review and Accountability
 4 Board; establishing membership of board; providing complaint procedures; establishing
 5 jurisdiction of the board; providing for the disposition of complaints; establishing
 6 requirements for final action; providing that board process does not abrogate rights;
 7 establishing procedures for suspension and dismissal; establishing procedural
 8 requirements; creating rules of procedure; authorizing rulemaking; and establishing
 9 reporting of the board.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2F. INDEPENDENT POLICE REVIEW AND ACCOUNTABILITY.

§15-2F-1. Board created, members.

1 (a) The Independent Police Review and Accountability Board is hereby created to provide
 2 a permanent statutory agency through which complaints lodged by members of the general public
 3 and police personnel regarding alleged acts of discourtesy and excessive force by police
 4 personnel are to be processed and evaluated, and to act as a resource and advisory agency for
 5 the State Police and all local police agencies.

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

7 (1) The Attorney General of West Virginia;

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

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

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

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

12 (6) Six citizen members appointed by the Governor, who shall each serve for a term of
 13 two years. A vacancy in a citizen member position shall be filled in the manner of the original

14 appointment for the remainder of the term. Citizen members may serve unlimited consecutive
 15 terms. Three members must be retired police officers or other sworn officers. There shall be no
 16 more than one member from each county, no more than one member from any senatorial district,
 17 and the members must be evenly divided between congressional districts.

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

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

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

§15-2F-2. Duties of the Board.

1 The board shall have various duties, including:

2 (1) Recommending policy change; and

3 (2) Reviewing current policy;

4 (3) Handling appeals and complaints;

5 (4) Retaining outside auditors; and

6 (5) Soliciting concerns and ideas.

§15-2F-3. 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-4. Jurisdiction and disposition of complaint.

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

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

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

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

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

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

13 (c) The board shall request the complainant, witnesses and the police department

14 personnel involved in a particular complaint to submit voluntarily to a polygraph test or to appear
15 voluntarily before the board.

§15-2F-5. Final action; appeal.

1 The superintendent shall render a decision as to the appropriate disciplinary action in each
2 case, but no final action may be taken until the recommendation of the board has been reviewed.
3 Decisions regarding action of local police may be appealed by either party to the applicable local
4 governmental authority.

§15-2F-6. 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-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 the any police agency.

§15-2F-8. 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-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.

NOTE: The purpose of this bill is to create an independent police review board.

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