

**SENATE BILL NO. 996**

March 4, 1998, Introduced by Senators DINGELL, BYRUM, HART  
and CISKY and referred to the Committee on Judiciary.

A bill to create a law enforcement officers' bill of rights;  
to define terms and conditions of disciplinary investigations; to  
create a cause of action for violations; to provide for civil  
remedies; to protect and regulate certain political activity; and  
to provide for exceptions.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. This act may be known and cited as the "law  
2 enforcement officers' bill of rights act".

3       Sec. 3. As used in this act:

4       (a) "Advocate" means an individual who prosecutes or defends  
5 the charges against a law enforcement officer at a disciplinary  
6 hearing.

7       (b) "Disciplinary action" means a sanction or punishment  
8 administered upon a law enforcement officer for conduct that

1 violates a statute, ordinance, published administrative rule,  
2 regulation, or procedure.

3 (c) "Disciplinary hearing" means the forum in which the  
4 allegations of misconduct are heard and the evidence relevant to  
5 the misconduct is presented.

6 (d) "Internal investigation" means an inquiry into the work  
7 related activity of a law enforcement officer by 1 or more law  
8 enforcement agency investigators to determine whether the officer  
9 violated a rule, order, or procedure of the law enforcement  
10 agency.

11 (e) "Law enforcement agency" means a state, county, town-  
12 ship, city, or village public agency that is charged with the  
13 duty of preventing crime and detecting and arresting individuals  
14 for violations of criminal law.

15 (f) "Law enforcement officer" or "officer" means an employee  
16 of a state, county, township, city, or village law enforcement  
17 agency who has taken an oath of office and whose duties are to  
18 enforce criminal laws.

19 (g) "Summary punishment" means a sanction imposed on a law  
20 enforcement officer by a superior authority within a law enforce-  
21 ment agency for a violation of 1 or more of the agency's rules,  
22 orders, or procedures. Summary punishment does not include a  
23 termination of employment, suspension, demotion, transfer, or a  
24 reduction in pay or a loss of any other financial employment  
25 benefit.

26 Sec. 5. This act does not apply to either of the  
27 following:

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1 (a) A criminal investigation of a law enforcement officer's  
2 conduct.

3 (b) A nondisciplinary investigation concerning the job per-  
4 formance activities of a law enforcement officer.

5 Sec. 7. If a law enforcement officer is under investigation  
6 that could lead to disciplinary action, all of the following  
7 apply:

8 (a) The law enforcement officer shall be notified of the  
9 investigation before being interviewed. The notice shall iden-  
10 tify the nature and scope of the investigation and all departmen-  
11 tal violations for which reasonable suspicion exists.

12 (b) If the complaint is made by a person from outside the  
13 law enforcement agency, the complaint shall not be investigated  
14 unless the complainant signs a detailed statement. The complaint  
15 shall be investigated within 15 days from the date of receipt.

16 (c) The individual in charge of the investigation shall  
17 notify the law enforcement officer under investigation of the  
18 results of the investigation and whether any recommendations for  
19 disciplinary action are made.

20 Sec. 9. A law enforcement officer is entitled to counsel or  
21 a person of his or her choice during questioning. The law  
22 enforcement officer may consent in writing to questioning without  
23 counsel.

24 Sec. 11. A law enforcement officer who is under investiga-  
25 tion may be questioned only under the following conditions:

26 (a) At a reasonable hour and while the officer is on duty,  
27 unless exigent circumstances exist.

1 (b) At the place where the law enforcement officer reports  
2 to duty, unless the law enforcement officer consents in writing  
3 to another place.

4 (c) Before being questioned, the law enforcement officer is  
5 told the name, rank, and position of the individual doing the  
6 questioning.

7 (d) The law enforcement officer is questioned by only 1  
8 investigator at a time during a questioning period.

9 (e) The law enforcement officer is told the nature of the  
10 investigation before questioning.

11 (f) The law enforcement officer is questioned only for a  
12 reasonable period of time and is provided time for rest and phys-  
13 ical bodily functions.

14 (g) The person questioning the law enforcement officer does  
15 not threaten or make a promise to induce an answer to a  
16 question.

17 (h) The questioning is fully transcribed or fully recorded  
18 electronically by audiotape or audio-videotape, and a copy of the  
19 transcription or recording is given to the law enforcement offi-  
20 cer within a reasonable time.

21 Sec. 13. (1) If an internal investigation of a law enforce-  
22 ment officer results in a recommendation for disciplinary action,  
23 the law enforcement officer shall be notified of the right to a  
24 hearing before a hearing officer or board as determined by the  
25 law enforcement agency.

26 (2) Disciplinary action shall not be taken before a hearing  
27 is held.

1 (3) Disciplinary punishment may be imposed against a law  
2 enforcement officer only after a hearing officer or board finds  
3 that the law enforcement officer violated a statute, ordinance,  
4 published administrative rule, regulation, or procedure.

5 Sec. 15. Charges against a law enforcement officer shall  
6 not be filed more than 90 days after the beginning of the disci-  
7 plinary investigation.

8 Sec. 17. Not less than 30 days before charges are filed  
9 against a law enforcement officer, a law enforcement agency shall  
10 provide the officer with actual written notice of all of the  
11 following:

12 (a) The name and mailing address of the hearing officer or  
13 board assigned to conduct the disciplinary hearing.

14 (b) The name, rank, and command of the advocate for the law  
15 enforcement agency if the advocate is a law enforcement officer.

16 (c) The name and mailing address of the advocate for the law  
17 enforcement agency if that advocate is not a law enforcement  
18 officer.

19 Sec. 19. A law enforcement officer is entitled to have an  
20 attorney or a person of his or her choice represent him or her at  
21 a disciplinary hearing.

22 Sec. 21. The law enforcement agency shall determine the  
23 composition of the disciplinary hearing board and the procedures  
24 for the conduct of the hearing. If the disciplinary hearing  
25 board is composed of more than 1 law enforcement officer, 1 of  
26 the member's rank shall be the same as that of the law  
27 enforcement officer who is the subject of the hearing.

1           Sec. 23. All evidence intended to be used by the law  
2 enforcement agency against a law enforcement officer at a disci-  
3 plinary hearing shall be made available for the law enforcement  
4 officer's inspection and copies of all documents shall be made  
5 available to the law enforcement officer not less than 15 days  
6 before the disciplinary hearing.

7           Sec. 25. Not less than 15 days before the hearing, the law  
8 enforcement agency shall provide the officer with the name of  
9 each witness to be called by the law enforcement agency to tes-  
10 tify against a law enforcement officer.

11           Sec. 27. Except for confidential information and confiden-  
12 tial sources, a copy of any investigative report shall be made  
13 available to the law enforcement officer who is the subject of  
14 the investigation not less than 15 days before the disciplinary  
15 hearing.

16           Sec. 29. Except as otherwise provided in this section, a  
17 law enforcement agency may not compel an officer under a disci-  
18 plinary investigation to disclose items of personal property or  
19 to provide information about personal income, assets, or debts or  
20 that of the law enforcement officer's family unless either of the  
21 following conditions is met:

22           (a) The information is necessary to the investigation of a  
23 violation of a federal or state law or a violation of an ordi-  
24 nance of a political subdivision of this state.

25           (b) Disclosure is required by federal or state law or by an  
26 ordinance of a political subdivision of this state.

1           Sec. 31. This act does not affect an existing collective  
2 bargaining agreement between a law enforcement agency and a  
3 bargaining unit that represents a law enforcement officer in  
4 effect on the effective date of this act.

5           Sec. 33. A hearing board or hearing officer is authorized  
6 to issue a summons to compel the appearance of a witness on  
7 behalf of a law enforcement officer. A hearing board or hearing  
8 officer may petition the circuit court to compel appearance  
9 before the board or hearing officer.

10          Sec. 35. A disciplinary hearing is not open to the public  
11 unless the law enforcement officer who is the subject of the  
12 hearing requests, in writing, that the hearing be open to the  
13 public or open only to certain individuals.

14          Sec. 37. A law enforcement agency conducting a disciplinary  
15 hearing shall do at least all of the following:

16           (a) Fully transcribe the hearing or fully record the hearing  
17 on audiotape or audio-videotape.

18           (b) Sequester witnesses throughout the hearing if requested  
19 by the officer who is the subject of the hearing.

20           (c) Require a witness to take an oath or make an affirmation  
21 before testifying and advise the witness that he or she is  
22 subject to the penalty for perjury for knowingly testifying  
23 falsely.

24          Sec. 39. After a disciplinary hearing has been completed, a  
25 hearing board or hearing officer shall render a decision on each  
26 charge.

1           Sec. 41. If a charge is based on fraud, false  
2 representation, dishonesty, deceit, or criminal behavior, the  
3 hearing board or hearing officer shall make a determination on  
4 the basis of clear and convincing evidence. If the charge is  
5 based on any other behavior, the hearing board or hearing officer  
6 shall make a determination on the basis of a preponderance of the  
7 evidence.

8           Sec. 43. If a hearing board or hearing officer determines  
9 that a law enforcement officer is not responsible for a violation  
10 of a statute, ordinance, published administrative rule, regula-  
11 tion, or procedure, the law enforcement agency shall not take  
12 disciplinary action against that officer.

13          Sec. 45. If a hearing board or hearing officer determines  
14 that a law enforcement officer is responsible for a violation of  
15 a statute, ordinance, published administrative rule, regulation,  
16 or procedure, the hearing board or hearing officer shall recom-  
17 mend, in writing, the punishment to be imposed.

18          Sec. 47. A law enforcement officer may appeal a final  
19 determination of a law enforcement agency in the circuit court in  
20 the county where the law enforcement agency is located. If the  
21 law enforcement agency is an agency of the state, the action  
22 shall be filed in the circuit court in the county where the law  
23 enforcement officer reports to duty.

24          Sec. 49. A law enforcement officer shall not waive a right  
25 conferred upon him or her under this act unless the waiver is  
26 expressly authorized by this act.

1           Sec. 51. Notwithstanding any other provision of this act, a  
2 law enforcement agency may administer summary punishment or  
3 temporarily suspend a law enforcement officer from duty in an  
4 emergency situation, to protect the safety of the law enforcement  
5 officer or the safety of the public. If a law enforcement offi-  
6 cer is temporarily suspended under this section, an employment  
7 benefit shall not be altered during the temporary suspension.

8           Sec. 53. A law enforcement agency shall not retaliate  
9 against a law enforcement officer for exercising the rights  
10 granted by this act.

11          Sec. 55. This act does not impair or alter a right or  
12 remedy that a law enforcement officer has under any other law or  
13 rule or a pertinent collective bargaining agreement.

14          Sec. 57. A law enforcement officer may file an action in  
15 the circuit court in the county where the law enforcement agency  
16 is located for an order or injunction to prevent a law enforce-  
17 ment agency from violating this act. If the law enforcement  
18 officer prevails in the action, he or she may recover compensa-  
19 tory damages and reasonable attorney fees.

20          Sec. 59. If a law enforcement agency places adverse mate-  
21 rial in a law enforcement officer's personnel file or has posses-  
22 sion or control over adverse material about a law enforcement  
23 officer, the law enforcement agency shall provide the officer  
24 with an opportunity to review the adverse material and provide a  
25 written comment on the adverse material.

26          Sec. 61. The provisions of this act are in addition to and  
27 do not affect any other right provided by law.

1        Sec. 63. A law enforcement agency shall not prohibit an  
2 officer from engaging in or refraining from political activity  
3 during any period in which the officer is off duty or not acting  
4 in an official capacity. This section does not apply to the head  
5 of a law enforcement agency who serves at the pleasure of the  
6 chief executive of the state or a political subdivision.