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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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BROWNE AND BELARDI, JANUARY 27, 1999

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REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 27, 1999

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AN ACT

1 Providing for the rights of police officers concerning certain  
2 complaints and grievances; and making repeals.

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4 and other entities not provided for in act.

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8 The General Assembly of the Commonwealth of Pennsylvania

9 hereby enacts as follows:

10 Section 1. Short title.

11 This act shall be known and may be cited as the Police

12 Officers Bill of Rights Act.

13 Section 2. Legislative intent.

14 The General Assembly recognizes the need for minimum

15 standards to protect the rights of police officers beyond

16 departmental procedures.

17 Section 3. Definitions.

18 The following words and phrases when used in this act shall

19 have the meanings given to them in this section unless the

20 context clearly indicates otherwise:

21 "Adverse employment action." Dismissal, demotion,

22 suspension, loss of pay, reduction in salary, written reprimand

23 or other action of a punitive nature. The term does not include

24 a temporary reassignment pending the outcome of an

25 investigation.

26 "Interrogation." Formal and systematic questioning of a

27 police officer with regard to acts or omissions within the scope

28 of employment as a police officer which may result in the taking

29 of adverse employment action against such police officer.

30 "Investigation." Action of a public agency, acting alone or

1 in cooperation with another agency, or a division or unit within  
2 an agency, or action of an individual police officer, taken with  
3 regard to another police officer as to acts or omissions within  
4 the scope of employment of the other officer. The term includes  
5 asking questions of other police officers or individuals who are  
6 not law enforcement officers; conducting observations;  
7 evaluating reports, records or other documents; and examining  
8 physical evidence.

9 "Police officer." An individual employed as a police officer  
10 by a public agency who is, by law, given the power to arrest  
11 when acting within the scope of employment. The term does not  
12 include the chief of police or comparable head of a public  
13 agency.

14 "Public agency." The police department or similar agency of:

15 (1) a city of the first class; or

16 (2) a municipality which elects to be governed by this  
17 act under section 15.

18 Section 4. Rights of police officers.

19 (a) General requirements.--If a police officer is under  
20 investigation and subject to interrogation by the public agency  
21 employing such police officer, the following minimum standards  
22 shall apply:

23 (1) The interrogation shall be conducted when the police  
24 officer is on duty unless the seriousness of the  
25 investigation is such that an immediate interrogation is  
26 necessary. The police officer may not be deprived of any  
27 compensation for any absence from work as a result of any  
28 interrogation and shall be fully compensated for any period  
29 he is interrogated while off-duty in accordance with any  
30 public agency overtime policy and Federal and State law. The

1 police officer may not be terminated from employment or  
2 disciplined for any work missed because of involvement in an  
3 interrogation.

4 (2) The interrogation shall take place at:

5 (i) the office of the command of the investigating  
6 officer;

7 (ii) the office of the precinct or police unit of  
8 the public agency employing the police officer under  
9 interrogation; or

10 (iii) an office within a building owned or leased by  
11 the municipality.

12 (3) The police officer under interrogation shall be  
13 informed of the name, rank and command of the police officer  
14 or municipal official or other official in charge of the  
15 interrogation and the name, rank and command of persons who  
16 will be present during the investigation. All questions  
17 directed to the police officer under interrogation shall be  
18 asked by and through no more than two interrogators at the  
19 same time.

20 (4) The police officer under interrogation shall be  
21 informed in writing of the nature of the complaint and  
22 provided the name or names of the complainant. This paragraph  
23 shall not apply to any investigation into alleged criminal  
24 activities which would constitute a misdemeanor or felony  
25 offense.

26 (5) If an anonymous or unsworn complaint is made against  
27 a police officer and no corroborative evidence is obtained  
28 within 30 days of its filing, the complaint shall be  
29 classified as unfounded, completely expunged from any file  
30 maintained by the public agency on the police officer and not

1       relied upon by that agency for any reason in the future.

2           (6) All interrogations shall be for reasonable periods  
3       and shall be timed to allow for personal necessities and rest  
4       periods as are reasonably necessary.

5           (7) The police officer under interrogation may not be  
6       subjected to intimidating, offensive, abusive or coercive  
7       language or threatened with adverse employment action, either  
8       directly or indirectly. The police officer under  
9       interrogation may not be offered promises of reward in  
10      connection with an investigation to adduce the answering of  
11      any question.

12          (8) The complete interrogation shall be transcribed,  
13      including a notation of any recess periods. A copy of the  
14      record shall be made available to the police officer or the  
15      police officer's counsel or representative, upon request,  
16      without cost.

17          (9) If the police officer under interrogation is under  
18      arrest or is likely to be placed under arrest, the police  
19      officer shall be completely informed of all constitutional  
20      rights and all rights under this act prior to the  
21      commencement of the interrogation.

22          (10) The police officer under interrogation shall have  
23      the right to be represented by counsel or other  
24      representative of his choice, who shall be present at all  
25      times during an interrogation. To the extent that the police  
26      officer is represented for purposes of collective bargaining  
27      by a collective bargaining representative pursuant to State  
28      statutes, the police officer shall have the opportunity to  
29      also have an agent from the exclusive collective bargaining  
30      representative present. The interrogation shall be suspended

1 for a reasonable time until representation can be obtained.

2 (11) No person in the public agency employing a police  
3 officer may make a public statement alleging or suggesting  
4 any wrongdoing by the police officer prior to a decision  
5 being rendered by the public agency employing the police  
6 officer unless the police officer has an opportunity to  
7 review and receive a copy of the material in writing and the  
8 police officer waives this provision in writing.

9 (12) No police officer may be compelled to speak or  
10 testify before, or be questioned by, an agency which is not a  
11 law enforcement agency. This paragraph shall be inapplicable  
12 to any judicial proceeding or to any hearing conducted by a  
13 standing or select committee of the Senate or the House of  
14 Representatives or any hearing conducted before the governing  
15 body of any municipality to which this act applies.

16 (13) Prompt action is required as follows:

17 (i) Except as hereinafter provided in this  
18 subparagraph, when any complaint is made against a police  
19 officer more than 90 days after the date of the alleged  
20 event complained of, the complaint shall be classified as  
21 unfounded and shall be completely expunged from any file  
22 maintained by the public agency on the police officer and  
23 not relied upon by that agency for any reason in the  
24 future. The police officer shall be notified in writing  
25 of the claim.

26 (ii) Notwithstanding subparagraph (i), no complaint  
27 which alleges conduct that would constitute a misdemeanor  
28 or felony offense if proven shall be classified as  
29 unfounded or expunged as a stale complaint until the  
30 applicable statute of limitations expires as prescribed

1           in 42 Pa.C.S. Ch. 55, Subch. C (relating to criminal  
2           proceedings).

3           (b) Routine, informed or unplanned interrogation or  
4           contact.--This section shall not apply to any interrogation of a  
5           police officer in the normal course of duty, counseling,  
6           instruction, informal verbal admonishment or other routine or  
7           unplanned contact with a supervisor or any other officer.

8           Section 5. Civil suits by police officers.

9           (a) Cause of action.--A police officer shall have a cause of  
10          action against any person or municipality for damages suffered  
11          as a result of a complaint filed against the police officer by  
12          that person or municipality which is found to be any of the  
13          following:

14               (1) Without merit and frivolous.

15               (2) Without merit and made in bad faith.

16          (b) Limit.--No municipality which is subject to the  
17          provisions of this act nor any public agency of such a  
18          municipality may adopt any regulation, ordinance or policy which  
19          abrogates the right of a police officer to institute an action  
20          under this section.

21          Section 6. Notice of disciplinary action; adverse comments.

22          (a) Adverse comments.--

23               (1) Except as set forth in paragraph (2), a comment  
24          adverse to the interest of a police officer may not be  
25          entered into:

26                   (i) the police officer's personnel file; or

27                   (ii) a record kept at the police officer's place or  
28          unit of employment.

29               (2) Paragraph (1) does not apply if any of the following  
30          apply:

1 (i) The police officer reads and signs the  
2 instrument which contains the adverse comment and which  
3 indicates that the police officer is aware that the  
4 adverse comment is being entered into the personnel file  
5 or record.

6 (ii) The police officer reads but refuses to sign  
7 the instrument which contains the adverse comment and  
8 which indicates that the police officer is aware that the  
9 adverse comment is being entered into the personnel file  
10 or record. For this subparagraph to apply, a witness must  
11 attest in writing to the reading and refusal.

12 (3) An adverse comment is not subject to disclosure  
13 under the act of June 21, 1957 (P.L.390, No.212), referred to  
14 as the Right-to-Know Law.

15 (b) Response.--

16 (1) A police officer shall have 30 days within which to  
17 file a written response to an adverse comment which is  
18 entered under subsection (a)(1) or (2).

19 (2) A written response under paragraph (1) shall be  
20 attached to the adverse comment.

21 (3) A written response is not subject to disclosure  
22 under the Right-to-Know Law.

## 23 Section 7. Polygraph.

24 No police officer may be compelled to submit to a polygraph  
25 examination involuntarily. No disciplinary action or other  
26 recrimination may be taken against a police officer for refusing  
27 to submit to a polygraph examination. No comment may be entered  
28 in the investigator's notes or anywhere else that the police  
29 officer refused to take a polygraph examination. No testimony or  
30 evidence shall be admissible at a subsequent hearing, trial or



1 proceeding, judicial or administrative, to the effect that the  
2 police officer refused to take a polygraph examination.

3 Section 8. Retaliation for exercising rights.

4 No police officer may be subjected to or threatened with  
5 adverse employment action as a result of the exercise of the  
6 rights accorded to police officers under this act.

7 Section 9. Hearing committee; arbitration alternative.

8 (a) Right to hearing.--

9 (1) If a public agency employing a police officer makes  
10 a decision to take an adverse employment action against a  
11 police officer, then, before taking the action, the public  
12 agency must give the police officer written notice of the  
13 decision and charges and the reasons for taking the adverse  
14 employment action. The notice must inform the police officer  
15 that the police officer is entitled to appeal the adverse  
16 employment decision to a hearing committee.

17 (2) If the police officer files an appeal within 30 days  
18 of receiving the notice, the police officer shall be entitled  
19 to a de novo hearing before the hearing committee on the  
20 adverse employment decision of the public agency.

21 (3) After the police officer files a notice of appeal  
22 with the public agency, a hearing committee shall be formed  
23 under subsection (b) unless the police officer has opted for  
24 the arbitration alternative.

25 (4) The hearing committee must provide the police  
26 officer with written notice of the time, place and subject  
27 matter of the hearing.

28 (5) An official record, including testimony and  
29 exhibits, must be kept of the hearing.

30 (6) The hearing shall be closed to the public unless the

1 police officer who is the subject of the hearing requests in  
2 writing that the hearing be opened to the general public.

3 (7) The hearing committee may uphold, reject or modify  
4 the adverse employment decision of the public agency.

5 (8) Except as otherwise provided in section 12, no  
6 police officer shall be subject to an adverse employment  
7 action except upon a determination of the hearing committee  
8 that the adverse employment action is warranted under the  
9 applicable law.

10 (9) If, after the hearing, the hearing committee upholds  
11 the dismissal, suspension or other adverse employment action  
12 against the police officer, the police officer shall not be  
13 entitled to pay and benefits to the extent that such pay or  
14 benefits are suspended or reduced by the hearing committee.  
15 If the police officer is reinstated on appeal to the courts,  
16 such officer shall be entitled to reimbursement for all  
17 salary and benefits that have not been paid.

18 (b) Hearing committee.--The hearing committee shall consist  
19 of three active police officers from within this Commonwealth  
20 who have had no part in the interrogation or related  
21 investigation of the charged police officer filing the appeal.  
22 One member shall be selected by the chief or the highest ranking  
23 police officer of the public agency. One member shall be  
24 selected by the charged police officer or a designated  
25 representative, and the member's name must be submitted by the  
26 police officer within ten days after filing the appeal. One  
27 member shall be selected by the other two selected members. If  
28 the other two members are unable to agree within ten days, the  
29 two members shall make application to the court of common pleas,  
30 and the court shall appoint the third member who shall be a

1 police officer.

2 (c) Evidence at hearing.--Relevant and material evidence  
3 shall be admissible, but evidence that is repetitious or  
4 cumulative and evidence which is not of the kind which would  
5 affect reasonable and fair-minded individuals in the conduct of  
6 their daily affairs shall be excluded. The hearing committee  
7 shall rule on the admissibility of evidence and shall otherwise  
8 control the reception of evidence so as to confine it to the  
9 issues in the proceeding. The hearing committee may not rely on  
10 hearsay which would be inadmissible in court in making decisions  
11 or findings of fact.

12 (d) Subpoena; oath; production of documents.--With respect  
13 to the subject of any investigation or hearing conducted under  
14 this section, the hearing committee may do any of the following:

- 15 (1) Subpoena witnesses.  
16 (2) Administer an oath or affirmation.  
17 (3) Examine an individual under oath.  
18 (4) Compel the production of documents.

19 (e) Witness fees.--

20 (1) Except as set forth in paragraph (2), witnesses  
21 subpoenaed by the public agency shall be paid the same fees  
22 and mileage rates as are paid for like services in the courts  
23 of common pleas. Witnesses subpoenaed at the instance of the  
24 participants shall be paid the same fees by the participant  
25 at whose instance the witness is subpoenaed; and the hearing  
26 committee, before issuing a subpoena at the instance of a  
27 participant, may require a deposit of an amount adequate to  
28 cover the fees and mileage involved.

29 (2) Notwithstanding paragraph (1), witnesses who are  
30 covered by a collective bargaining agreement shall be

1 compensated for appearing at a proceeding under this section  
2 in accordance with the terms of that agreement as applied to  
3 testimony at judicial proceedings and, as appropriate, work  
4 performed by that police officer outside of the normal work  
5 day.

6 (f) Cross-examination and rebuttal.--Each party shall have  
7 the right to cross-examination of the witnesses who testify and  
8 may submit rebuttal evidence.

9 (g) Judicial notice.--The hearing committee conducting the  
10 hearing may take notice of judicially cognizable facts and may  
11 take notice of general, technical or scientific facts within its  
12 specialized knowledge.

13 (h) Content and transmission of hearing committee  
14 decision.--A decision, order or action taken as a result of the  
15 hearing before the hearing committee must be in writing and must  
16 be accompanied by findings of fact. A copy of the decision or  
17 order and accompanying findings and conclusions shall be  
18 delivered or mailed promptly to the police officer or the police  
19 officer's attorney or representative of record.

20 (i) Appeal.--An aggrieved party may appeal the decision of  
21 the hearing committee to a court of competent jurisdiction.

22 (j) Status of case during appeal.--Nothing in this act shall  
23 prohibit the implementation of an adverse employment action  
24 against a police officer during the course of judicial review of  
25 a decision of the hearing committee or a decision made pursuant  
26 to the arbitration alternative to the extent that such  
27 arbitration decision is appealable.

28 (k) Arbitration alternative.--

29 (1) If a public agency is subject to a collective  
30 bargaining agreement which provides for final and binding

1 arbitration as a means of dispute resolution, a police  
2 officer covered by the collective bargaining agreement may  
3 elect to proceed to arbitration instead of the method  
4 described by this section for hearings conducted before the  
5 hearing committee.

6 (2) A police officer need not be required to proceed to  
7 arbitration pursuant to a collective bargaining agreement if  
8 the police officer chooses the hearing committee procedure  
9 prescribed in this section. The police officer must exercise  
10 this option prior to the formation of the hearing committee.

11 (1) Inapplicability of section.--If the adverse employment  
12 action is based upon a conviction for a misdemeanor or felony  
13 offense, the decision shall be made by the public agency  
14 employing the police officer, without regard to the requirements  
15 of this section, subject to an appeal to a court of competent  
16 jurisdiction.

17 Section 10. Personal privacy.

18 (a) Disclosures.--No police officer may be required to  
19 disclose greater information as to property, income, assets,  
20 source of income, debts, personal or domestic expenditures,  
21 including those of any member of his family or household, than  
22 the principal elected officials of the municipality employing  
23 the police officer are required by law to disclose unless the  
24 information is obtained under proper legal procedures.

25 (b) Search of lockers.--A police officer's locker or other  
26 space for storage that may be assigned to the police officer may  
27 not be searched except in the police officer's presence and with  
28 his written consent unless a valid search warrant has been  
29 obtained to conduct the search. This section shall apply only to  
30 lockers or other space for storage that is owned by the

1 employing agency. A police officer from whom consent is  
2 requested shall be told of the right to deny the consent.

3 Section 11. Impact of collective bargaining agreements.

4 Nothing in this act shall be construed to diminish the  
5 obligation of a municipality to comply with a collective  
6 bargaining agreement which provides greater rights and coverage  
7 to police officers than the rights and coverage provided by this  
8 act. The rights and coverage under this act may not be  
9 diminished by any collective bargaining agreement.

10 Section 12. Summary suspensions.

11 (a) Emergency suspension.--Emergency suspension may be  
12 imposed by the chief or the highest ranking police officer of  
13 the public agency if the particular and unique circumstances of  
14 the situation dictate that such action is necessary to protect  
15 the public interest. Any police officer receiving emergency  
16 suspension may be relieved of duty, but the police officer shall  
17 receive all ordinary pay and benefits as if the police officer  
18 were not suspended. A suspended police officer shall be entitled  
19 to a hearing before a hearing committee in accordance with  
20 section 9 upon the police officer's request. The time period for  
21 the hearing shall not exceed 30 days. If, after the hearing, the  
22 hearing committee does suspend or dismiss the police officer,  
23 the police officer shall not be entitled to pay and benefits. If  
24 the police officer is reinstated at a subsequent hearing, the  
25 police officer shall be entitled to be reimbursed for all salary  
26 and benefits that have not been paid.

27 (b) Criminal charges.--A police officer against whom a  
28 criminal proceeding involving any misdemeanor or felony offense  
29 has been instituted by the district attorney or Attorney General  
30 may be suspended without pay pending disposition of the criminal

1 charges. Medical benefits and insurance to which a police  
2 officer, and spouse and dependents, are entitled by virtue of  
3 employment may not be suspended. If the police officer is  
4 acquitted of the criminal charges, the police officer shall be  
5 reinstated and reimbursed for all salary and benefits that have  
6 not been paid during the suspension period.

7 Section 13. Failure to comply.

8 If any public agency fails to comply with the requirements of  
9 this act, a police officer who is aggrieved by the failure to  
10 comply may institute an action in the court of competent  
11 jurisdiction for an injunction to restrain the violation and to  
12 compel the performance of the duties imposed by this act. In  
13 addition to any injunctive relief awarded, the court shall order  
14 the public agency to pay for any pay and benefits lost by the  
15 police officer on account of the violation and for reasonable  
16 attorney fees and court costs incurred by any police officer who  
17 prevails.

18 Section 14. Preservation of greater police officer protections.

19 Nothing in this act shall be deemed to repeal, abrogate or  
20 modify a statute, local ordinance or public agency policy to the  
21 extent that such statute, ordinance or policy accords police  
22 officers greater protection than is provided under this act.

23 Section 15. Local option.

24 (a) Election to be held.--In a municipality, an election may  
25 be held on the date of the primary election immediately  
26 preceding a municipal election, but not more than once in four  
27 years, to determine the will of the electors with respect to the  
28 inclusion of such municipality under the provisions of this act.  
29 If an election has been held at the primary election preceding a  
30 municipal election, another election may be held under the

1 provisions of this act at the primary election occurring the  
2 fourth year after such prior election. If electors equal to at  
3 least 25% of the highest vote cast for any office in the  
4 municipality at the last preceding general election file a  
5 petition with the county board of elections of the county, or if  
6 the governing body of the municipality adopts, by a majority  
7 vote, a resolution, to place on the ballot a question of whether  
8 such municipality shall be governed by the provisions of the  
9 act, upon filing of this petition or resolution with the county  
10 board of elections, the board shall cause a question to be  
11 placed on the ballot and submitted at the primary election  
12 immediately preceding the municipal election. The question shall  
13 be in the following form:

14           Do you favor the application of the provisions  
15           of the Police Officers Bill of Rights Act  
16           in connection with the interrogation and  
17           investigation of police officers and disciplinary  
18           proceedings against police officers in the  
19           \_\_\_\_\_ of \_\_\_\_\_?

20       (b) Vote.--If a majority of the electors voting on the  
21 question vote "yes," then the provisions of this act shall apply  
22 within the municipality in which the referendum is conducted,  
23 but if a majority of the electors voting on any such question  
24 vote "no," then the provisions of this act shall not apply  
25 within the municipality in which the referendum is conducted.

26       (c) Voting proceedings.--Proceedings under this section  
27 shall be in accordance with the provisions of the act of June 3,  
28 1937 (P.L.1333, No.320), known as the Pennsylvania Election  
29 Code.

30       (d) Withdrawal of approval.--The referendum procedure



1 contained in this section shall also be available to withdraw  
2 the approval of the electors for the application of the  
3 provisions of this act, which was granted through a prior  
4 referendum.

5 (e) Application to investigations and proceedings initiated  
6 prior to revocation.--Any investigation and disciplinary  
7 proceeding commenced prior to the date of any revocation of the  
8 application of this act to a municipality shall continue to be  
9 governed by the provisions of this act.

10 (f) Inapplicability to cities of first class.--This section  
11 shall not apply to a city of the first class.

12 Section 16. Lack of jurisdiction by civil service commissions  
13 and other entities not provided for in act.

14 The procedure for determining any decision on whether to take  
15 an adverse employment action against a police officer shall be  
16 governed by this act. No civil service commission or other  
17 administrative body or nonjudicial entity, except for the public  
18 agency, a hearing committee or the arbitration alternative  
19 provided for in this act shall possess a jurisdiction with  
20 respect to any such adverse employment action.

21 Section 17. Repeals.

22 (a) Specific.--The following acts and parts of acts are  
23 repealed insofar as they are inconsistent with this act:

24 Act of April 21, 1949 (P.L.665, No.155), known as the  
25 First Class City Home Rule Act.

26 42 Pa.C.S. Ch. 85 Subch. C.

27 (b) General.--All other acts and parts of acts are repealed  
28 insofar as they are inconsistent with this act.

29 Section 18. Applicability.

30 This act shall apply to all of the following:

1           (1) A city of the first class.  
2           (2) A municipality which elects to be governed by this  
3       act under section 15.  
4 Section 19. Effective date.  
5       This act shall take effect in 60 days.