

**LAW AND JUSTICE (44 PA.C.S.) - LAW ENFORCEMENT BACKGROUND  
INVESTIGATIONS AND EMPLOYMENT INFORMATION**

Act of Jul. 14, 2020, P.L. 613, No. 57

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No. 2020-57

HB 1841

**AN ACT**

Amending Title 44 (Law and Justice) of the Pennsylvania Consolidated Statutes, providing for law enforcement background investigations, for duties of the Municipal Police Officers' Education and Training Commission, law enforcement agencies and employers and for immunity from liability and violations.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 44 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

**CHAPTER 73**

**LAW ENFORCEMENT BACKGROUND INVESTIGATIONS  
AND EMPLOYMENT INFORMATION**

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**§ 7301. Scope of chapter.**

This chapter relates to law enforcement background investigations and employment information for law enforcement officers.

**§ 7302. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Applicant." A person applying for employment as a law enforcement officer or for a position leading to employment as a law enforcement officer.

"Commission." The Municipal Police Officers' Education and Training Commission.

"Employment information." Written information in connection with job applications, performance evaluations, attendance records, disciplinary actions and eligibility for rehire.

"Final and binding disciplinary action." Disciplinary action in which a law enforcement officer voluntarily accepts discipline or, in the case of appeal by the disciplined officer, disciplinary action in which the appeal has been exhausted or resolved by settlement agreement, arbitration or other dispute resolution mechanism.

"Law enforcement agency." A law enforcement agency in this Commonwealth that is the employer of a law enforcement officer.

"Law enforcement officer." The term shall have the same meaning as the term "peace officer" under 18 Pa.C.S. § 501 (relating to definitions).

"Prospective employing law enforcement agency." A law enforcement agency in this Commonwealth that is considering employing a law enforcement officer.

"Separation records." Records required to be maintained under section 7308 (relating to maintenance of records).

§ 7303. Background investigation required.

(a) General rule.--A prospective employing law enforcement agency shall conduct a thorough background investigation on an applicant, including a review of the applicant's employment information and separation records, if applicable, in accordance with this chapter, before the applicant may be employed. The background investigation shall determine at a minimum whether the applicant meets the standards established by the commission.

(b) Higher standards not precluded.--The required background investigation does not prevent a law enforcement agency from establishing higher standards for law enforcement employees if those standards are not contrary to applicable law.

§ 7304. Disclosure of employment information.

Upon request of a prospective employing law enforcement agency, a law enforcement agency shall disclose or otherwise make available for inspection employment information of an applicant who is the subject of a background investigation under this chapter. The request for disclosure of employment information must be:

(1) in writing;

(2) accompanied by an original authorization and release signed by the applicant; and

(3) signed by the chief of police or other authorized representative of the prospective employing law enforcement agency conducting the background investigation.

§ 7305. Refusal to disclose employment information.

If a law enforcement agency refuses to disclose employment information to a prospective employing law enforcement agency in accordance with this chapter, the prospective employing law enforcement agency may petition Commonwealth Court to issue an order directing the disclosure of the employment information. The petition must include a copy of the original request for disclosure and the authorization and release signed by the applicant.

§ 7306. Immunity.

(a) General rule.--In the absence of fraud or malice, a law enforcement agency is immune from civil liability for employment information released to a prospective employing law enforcement agency in accordance with this chapter or for any subsequent publication made by the prospective employing law enforcement agency or the applicant of employment information released to a law enforcement agency under this chapter.

(b) Release in violation of chapter.--

(1) A law enforcement agency is not immune from civil liability for employment information released in violation of this chapter.

(2) An applicant adversely affected by the release of employment information in violation of this chapter may seek declarative and injunctive relief and actual and punitive damages attributable to the violation in an appropriate court.

(3) The court shall award reasonable expenses, including attorney fees, court costs and compensation for loss of income, to the applicant adversely affected if an action under paragraph (2) results in:

- (i) a final determination by a court in favor of the law enforcement officer adversely affected; or
- (ii) rescission of the challenged release of information after suit has been filed under paragraph (2) but prior to a final determination by a court.

§ 7307. Confidentiality agreements and nondisclosure.

(a) When agreement exists.--If employment information is subject to a confidentiality agreement between the applicant and a law enforcement agency, the applicant shall disclose to the prospective employing law enforcement agency the fact that a confidentiality agreement exists.

(b) When agreement is absent and applicant authorizes release.--If the applicant has authorized the release of employment information without regard to a previous agreement to the contrary, the law enforcement agency may disclose the employment information in accordance with this chapter.

(c) Employment information sealed or subject to court order.--If employment information is sealed or otherwise subject to a nondisclosure order by a court of competent jurisdiction, the law enforcement agency shall disclose to the prospective employing law enforcement agency the fact that a nondisclosure order exists, along with information identifying the court and case number.

§ 7308. Maintenance of records.

(a) General rule.--In addition to any other employment information required to be maintained under current law and regulation, a law enforcement agency shall maintain the following separation records:

(1) Records of the reason or reasons for, and circumstances surrounding, a separation of service for a law enforcement officer on a form developed by the commission and made available on its publicly accessible Internet website.

(2) Records of all criminal charges filed against a law enforcement officer.

(3) Records of all civil or ethical complaints made against a law enforcement officer.

(4) Records of the disposition of all charges and complaints, including final and binding disciplinary actions, taken by the law enforcement agency against a law enforcement officer, including imposition of probationary or other conditions related to employment.

(b) Review of separation records.--A law enforcement officer may review a separation record upon the request of the law enforcement officer on a form developed by the commission and made available on the law enforcement agency's publicly accessible Internet website.

(c) Disagreement with record accuracy.--

(1) If a law enforcement officer disagrees with the accuracy of the contents of a separation record, the law enforcement officer may request the correction or removal of the portion of the record believed to be incorrect. The request must be made in writing using a form developed by the commission and available on the commission's publicly accessible Internet website. The law enforcement agency shall provide written reasons for correction or removal of a portion of the record, or of the refusal to do so.

(2) If the law enforcement agency and the law enforcement officer cannot reach an agreement on the contents of the record, the law enforcement officer may submit a written statement explaining the law enforcement officer's position and the basis for the disagreement. The statement shall be kept with and part of the separation records required under this section and provided with the rest of the contents of the separation records as required under section 7310 (relating to disclosure of separation).

§ 7309. Reporting.

(a) Electronic database.--

(1) The commission shall establish and maintain an electronic database containing the separation records.

(2) The database shall be accessible to all law enforcement agencies in this Commonwealth.

(3) Except as provided under section 7311(c) (relating to hiring report), separation records maintained in the database shall be exempt from disclosure under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

(b) Procedure.--The commission shall establish a procedure by which a law enforcement agency may request and review separation records in the database for the purpose of employing an applicant.

(c) Request log.--The commission shall log all requests from law enforcement agencies for separation records and may not disclose the name of any law enforcement officer subject to a request for separation records to the public. The information provided to a law enforcement agency, including a law enforcement agency outside of this Commonwealth, shall be exempt from disclosure under the Right-to-Know Law.

(d) Time period to submit.--Upon the separation of an officer from a law enforcement agency, the law enforcement agency shall submit the separation records to the commission within 15 days of separation.

(e) Good faith immunity.--

(1) A former employing law enforcement agency that submits a separation record to the database in good faith is immune from civil liability for the subsequent disclosure of that record from the database.

(2) A law enforcement agency is presumed to be acting in good faith at the time of a disclosure under this chapter unless a preponderance of the evidence establishes one or more of the following:

(i) the law enforcement agency knew that the separation record was false or misleading;

(ii) the law enforcement agency submitted the separation record with a reckless disregard for the truth; or

(iii) submission of the separation record was specifically prohibited by a Federal or State law.

§ 7310. Disclosure of separation.

(a) Waiver required.--

(1) An applicant shall provide to the prospective employing law enforcement agency, upon an offer of employment, a signed waiver under this section.

(2) The waiver shall expressly allow the prospective employing law enforcement agency to contact the commission to seek a copy of any separation record.

(3) The waiver shall consist of a form developed by the commission and made available on the commission's publicly accessible Internet website.

(4) The prospective employing law enforcement agency shall provide the signed waiver to the commission.

(5) Upon receipt of the signed waiver, the commission shall, within seven days, provide a copy of any separation record relating to the applicant to the prospective employing law enforcement agency or certify that no separation record is in the database.

(b) Record of separation condition of hiring.--A prospective employing law enforcement agency may not hire an applicant until the prospective employing law enforcement agency receives a copy of the separation record or certification of no separation record from the commission.

§ 7311. Hiring report.

(a) Information required to be reported.--If a prospective employing law enforcement agency hires an applicant whose separation records includes any of the following, the law enforcement agency shall file a report with the commission that indicates the prospective employing law enforcement agency's reasoning and rationale for hiring the applicant:

(1) Final and binding disciplinary action based on any of the following:

- (i) excessive force;
- (ii) harassment;
- (iii) theft;
- (iv) discrimination;
- (v) sexual abuse;
- (vi) sexual misconduct;
- (vii) domestic violence;
- (viii) coercion of a false confession;
- (ix) filing a false report; or
- (x) a judicial finding of dishonesty.

(2) A criminal conviction relating to conduct described in paragraph (1).

(b) Electronic database of commission.--

(1) The hiring report shall be included in the commission's electronic database.

(2) The hiring report shall be on a form developed by the commission and made available on the commission's publicly accessible Internet website.

(c) Subject to disclosure.--The hiring report shall be subject to disclosure under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

§ 7312. Regulations.

(a) Temporary regulations.--In order to facilitate the prompt implementation of this chapter, the commission shall promulgate temporary regulations within six months of the effective date of this section that shall expire no later than two years following the publication of the temporary regulations. The commission shall promulgate temporary regulations not subject to:

(1) Section 612 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(2) Sections 201, 202, 203, 204 and 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

(3) Sections 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.

(4) The act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(b) Publication.--The commission shall transmit the temporary regulations to the Legislative Reference Bureau for

publication in the Pennsylvania Bulletin no later than six months after the effective date of this section.

(c) Contents.--The commission shall, by regulation, including temporary regulation, establish the following:

(1) Procedures to guarantee the confidentiality of employment information and separation records.

(2) Procedures to guarantee the security of the database established under this chapter.

(3) Reportable disciplinary actions and criminal conduct falling within the scope of section 7311 (relating to hiring report).

(4) Any other procedure deemed necessary by the commission for implementation of this chapter.

Section 2. This act shall take effect as follows:

(1) Except as provided in paragraph (2), the addition of 44 Pa.C.S. Ch. 73 shall take effect in one year.

(2) The addition of 44 Pa.C.S. § 7312 shall take effect in 60 days.

(3) This section shall take effect immediately.

APPROVED--The 14th day of July, A.D. 2020.

TOM WOLF