

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 379

Session of  
1977

INTRODUCED BY MESSRS. CAPUTO, CESSAR, CIANCIULLI AND JONES,  
MARCH 1, 1977

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF  
REPRESENTATIVES, AS AMENDED, MARCH 23, 1977

## AN ACT

1 Providing for the rights of law enforcement officers concerning  
2 certain complaints and grievances.

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

5 Section 1. Rights of law enforcement officers.

6 ~~When a law enforcement officer of a municipality is~~ <—  
7 ~~investigated or interrogated the rules applicable thereto shall~~  
8 ~~be:~~

9 (A) "LAW ENFORCEMENT OFFICER" MEANS ANY FULL-TIME LAW <—  
10 ENFORCEMENT OFFICER OF ANY POLICE DEPARTMENT OR ORGANIZATION OF  
11 A MUNICIPALITY, COUNTY OR PARK OR THE STATE OR ANY AGENCY  
12 THEREOF INCLUDING BUT NOT NECESSARILY LIMITED TO LAW ENFORCEMENT  
13 OFFICERS OF THE PENNSYLVANIA STATE POLICE, MUNICIPAL POLICE  
14 DEPARTMENTS, CAPITOL POLICE, BUREAU OF NARCOTICS, LIQUOR CONTROL  
15 BOARD ENFORCEMENT DIVISION, AND THE DELAWARE RIVER PORT  
16 AUTHORITY.

17 (B) WHENEVER A LAW ENFORCEMENT OFFICER IS UNDER

1 INTERROGATION FOR ALLEGED MALFEASANCE, MISFEASANCE, OR  
2 NONFEASANCE OF OFFICIAL DUTY, WITH A VIEW TO POSSIBLE  
3 DISCIPLINARY ACTION, DEMOTION, DISMISSAL, OR CRIMINAL CHARGES,  
4 THE FOLLOWING MINIMUM STANDARDS SHALL APPLY:

5 (1) The interrogation shall be conducted when the  
6 officer is on duty unless the seriousness of the  
7 investigation is such that an immediate interrogation is  
8 necessary.

9 (2) The ~~investigation~~ INTERROGATION shall take place at <—  
10 the office of the command of the investigating officer or the  
11 office of the precinct or police unit of the municipality in  
12 which the incident allegedly occurred.

13 (3) The officer under ~~investigation~~ INTERROGATION shall <—  
14 be informed of the name, rank and command of the officer in  
15 charge of the ~~investigation~~ INTERROGATION, the interrogating <—  
16 officer and the persons who will be present during the  
17 interrogation. All questions shall be made through one  
18 interrogator.

19 (4) The officer under ~~investigation~~ INTERROGATION shall <—  
20 be informed of the nature of the ~~investigation~~ INTERROGATION <—  
21 and the names of the complainants prior to the ~~investigation~~ <—  
22 INTERROGATION. <—

23 (5) No complaint shall be entertained unless it is sworn  
24 to by the complainant before an official authorized to  
25 administer oaths.

26 (6) Interrogating sessions shall be for reasonable  
27 periods and shall be timed to allow for such personal  
28 necessities and rest periods as are reasonably necessary.

29 (7) The officer under interrogation shall not be  
30 subjected to offensive language or threatened with transfer,

1 dismissal or disciplinary action.

2 (8) The entire interrogation shall be recorded.

3 (9) If the officer under interrogation is under arrest,  
4 or is likely to be placed under arrest, he shall be informed  
5 of his rights prior to the commencement of the interrogation.

6 (10) The officer under interrogation shall have the  
7 right to be represented by counsel or other representative of  
8 his choice who shall be present at all times during an  
9 interrogation.

10 Section 2. Civil suits by officers.

11 A law enforcement officer shall have the right to sue a  
12 person for damages suffered by him and for the abridgment of his  
13 civil rights arising out of the performance of his official  
14 duties or when complaints filed against him are found to be  
15 without merit and made willfully with intent to cause him damage  
16 or the loss of his employment.

17 Section 3. Notice of disciplinary action; polygraphs.

18 (a) No dismissal, demotion, transfer, reassignment or other  
19 personnel action which might result in a loss of pay or benefits  
20 or which might be considered a punitive measure shall be taken  
21 against a law enforcement officer of a municipality unless he is  
22 notified thereof and provided with the reasons therefor prior to  
23 the effective date of such action.

24 (b) No officer shall have any comment adverse to his  
25 interest entered in his personnel file, or any record kept at  
26 his place or unit of employment or any other place recording  
27 such comments by any person, without the officer having first  
28 read and signed the instrument containing the adverse comment  
29 indicating he is aware that such comment is being placed in his  
30 personnel file or other place of recordation of such comments,

1 except that such entry may be made if after reading such  
2 instrument containing any adverse comment the officer refuses to  
3 sign it. A witness shall thereafter note that such officer was  
4 presented with the opportunity to read and sign such instrument  
5 and refused to do so.

6 (c) An officer shall have 30 days within which to file a  
7 written response to any adverse comment entered in his personnel  
8 file. Such written response shall be attached to, and shall  
9 accompany, the adverse comment.

10 (d) No officer shall be compelled to submit to a polygraph  
11 examination against his will. No disciplinary action or other  
12 recrimination shall be taken against an officer refusing to  
13 submit to a polygraph examination, nor shall any comment be  
14 entered anywhere in the investigator's notes or anywhere else  
15 that the officer refused to take a polygraph examination, nor  
16 shall any testimony or evidence be admissible at a subsequent  
17 hearing, trial, or proceeding, judicial or administrative, to  
18 the effect that the officer refused to take a polygraph  
19 examination.

#### 20 Section 4. Retaliation for exercising rights.

21 (a) No law enforcement officer ~~of a municipality~~ shall be <—  
22 discharged, disciplined, demoted or denied promotion, transfer  
23 or reassignment, or be discriminated against in regard to his  
24 employment, or be threatened with any such treatment, by reason  
25 of the exercise by him or his constitutional rights or the  
26 rights granted him by this act.

27 (b) Nothing in this section shall preclude a head of an  
28 agency from ordering an officer to cooperate with other agencies  
29 involved in criminal investigations. If an officer fails to  
30 comply with such an order, the agency may officially charge him

1 with insubordination.

2 (c) No dismissal or demotion, nor denial of promotion, shall  
3 be undertaken by any public agency without providing the officer  
4 with an opportunity for administrative appeal.

5 Section 5. Grievance procedure.

6 The procedure for handling complaints and grievances of law  
7 enforcement officers shall be as follows:

8 ~~(1) Each municipality shall establish a commission~~ <—  
9 ~~composed of an equal number of representatives of government,~~  
10 ~~law enforcement agencies and the general public which shall~~  
11 ~~have the authority and duty to receive, investigate and~~  
12 ~~determine complaints and grievances submitted to it in~~  
13 ~~writing by, or on behalf of, a law enforcement officer of a~~  
14 ~~municipality.~~

15 (1) ANY COMPLAINT OR GRIEVANCE COVERED BY THIS ACT SHALL BE <—  
16 SUBMITTED FOR ARBITRATION TO THE AMERICAN ARBITRATION  
17 ASSOCIATION UNDER ITS RULES AND REGULATIONS. ANY DECISION MADE  
18 BY AN ARBITRATOR SO CHOSEN SHALL BE DEEMED FINAL AND BINDING ON  
19 THE PARTIES HERETO. THE COST OF SUCH ARBITRATION SHALL BE BORNE  
20 EQUALLY BY BOTH PARTIES.

21 (2) A certified or recognized employee organization  
22 representing law enforcement officers of the Commonwealth,  
23 municipality or public agency, on written request of a law  
24 enforcement officer, may act on his behalf to file and  
25 process complaints submitted to ~~such commission.~~ THE AMERICAN <—  
26 ARBITRATION ASSOCIATION. A certified or recognized employee  
27 organization may initiate actions with the ~~commission~~ <—  
28 AMERICAN ARBITRATION ASSOCIATION on its own initiative if the <—  
29 complaint or matter in question involves one or more law  
30 enforcement officers in its organization.

1           ~~(3) The commission shall be empowered to hold hearings,~~ <—  
2           ~~take testimony under oath, issue subpoenas, issue cease and~~  
3           ~~desist orders and institute actions in an appropriate court~~  
4           ~~for compliance with its orders. Hearings shall be in~~  
5           ~~accordance with the provisions of the act of July 19, 1974~~  
6           ~~(P.L.486, No.175), referred to as the Public Agency Open~~  
7           ~~Meeting Law.~~

8           ~~(4) The commission may seek to resolve complaints in~~  
9           ~~meetings or procedures other than hearings. The results~~  
10          ~~thereof shall be reported to the commission at the first~~  
11          ~~regularly scheduled meeting after such action is taken.~~

12          ~~(5) The commission shall hold regular meetings at least~~  
13          ~~quarterly. Such meetings shall be in accordance with the~~  
14          ~~provisions of the act of July 19, 1974 (P.L.486, No.175),~~  
15          ~~referred to as the Public Agency Open Meeting Law.~~

16          (3) NO GRIEVANCE OR COMPLAINT SHALL BE SUBMITTED TO THE <—  
17 AMERICAN ARBITRATION ASSOCIATION UNTIL ALL DEPARTMENTAL AND  
18 ADMINISTRATIVE APPEALS HAVE BEEN EXHAUSTED. SUCH AS DEPARTMENTAL  
19 COMMAND STRUCTURE INCLUDING CHIEF OF POLICE, CITY COUNCIL,  
20 MAYOR, AND CIVIL SERVICE COMMISSION, OR ANY OTHER STEPS NOW  
21 INCLUDED UNDER LAW.

22 Section 6. Additional remedies.

23          A law enforcement officer may, in addition to the other  
24 procedures provided for in this section, institute an action in  
25 a court of competent jurisdiction for the adjudication of a  
26 complaint or grievance.

27 ~~Section 7. Political activity.~~ <—

28          ~~Except as otherwise provided by law, or whenever on duty or~~  
29          ~~in uniform, no officer shall be prohibited from engaging or be~~  
30          ~~coerced or required to engage, in political activity.~~

1 Section 8 7. Personal privacy.

<—

2 No officer shall be required or requested for purposes of job  
3 assignment or other personnel action to disclose any item of his  
4 property, income, assets, source of income, debts or personal or  
5 domestic expenditures (including those of any member of his  
6 family or household) unless such information is obtained under  
7 proper legal procedure, tends to indicate a conflict of interest  
8 with respect to the performance of his official duties, or is  
9 necessary for the employing agency to ascertain the desirability  
10 of assigning the officer to a specialized unit in which there is  
11 a strong possibility that bribes or other improper inducements  
12 may be offered.

13 Section 9 8. Search of lockers.

<—

14 No officer shall have his locker, or other space for storage  
15 that may be assigned to him searched except in his presence, or  
16 with his consent, or unless a valid search warrant has been  
17 obtained or where he has been notified that a search will be  
18 conducted. This section shall apply only to lockers or other  
19 space for storage that is owned by the employing agency. Any  
20 person from whom consent is requested shall be told that he has  
21 the right to deny the consent.

22 Section ~~10~~ 9. Effective date.

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23 This act shall take effect in 60 days.