

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 500

Short Title: Law Enf. Off. Discipline.

(Public)

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Sponsors: Representatives Hensley; Flaherty, Russell, and Stamey.

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Referred to: Judiciary III.

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March 24, 1993

A BILL TO BE ENTITLED

AN ACT TO STANDARDIZE THE INVESTIGATION AND DISCIPLINE OF LAW  
ENFORCEMENT OFFICERS AND TO PROVIDE FOR JUDICIAL REVIEW.

The General Assembly of North Carolina enacts:

Section 1. For the purpose of this act:

(1) "Employing agency" means any State agency or department, municipality, or political subdivision of the State that employs law enforcement officers.

(2) "Law enforcement officer" means all officers with the powers of arrest as defined by law and required to be certified under Chapters 17C and 17E of the General Statutes.

(3) "Officer" means law enforcement officer.

Sec. 2. If an investigation by an employing agency involves matters which could reasonably lead to the dismissal, demotion, suspension, or transfer for punitive reasons of, or any disciplinary action against, a law enforcement officer, it is required that:

(1) Any questioning of the officer shall be conducted at a reasonable time and place as designated by the investigating officer, preferably when the officer under investigation is on duty and at the office of the command of the investigating officer, or at the office of the local precinct or police unit of the officer being investigated, unless exigent circumstances require otherwise.

(2) Prior to the questioning of the officer under investigation, he or she shall be informed of:

- 1           a.     The name and rank of the investigating officer and of any  
2           individual present during the questioning; and  
3           b.     The nature of the investigation, whether it is criminal, civil, or  
4           administrative.
- 5           (3)    If the investigation is criminal in nature, prior to the beginning of  
6           questioning, the officer under investigation shall be informed of the  
7           names of all complainants and witnesses, shall be permitted to review  
8           all written or otherwise recorded statements made by, or on behalf of,  
9           all complainants and witnesses, and shall be informed of his or her  
10          constitutional and statutory rights in the same manner as is required to  
11          be given to any other person suspected of a crime.
- 12          (4)    Questioning sessions shall be for a reasonable duration and shall allow  
13          time for reasonable rest periods and for personal necessities.
- 14          (5)    The officer being questioned shall not be subjected to offensive  
15          language or threats of transfer, dismissal, or disciplinary action. No  
16          promise or reward shall be made as an inducement to answering any  
17          questions.
- 18          (6)    The questioning of an officer, including all recess periods, shall be  
19          recorded, and there shall be no unrecorded questions or statements.
- 20          (7)    If the officer being questioned is under arrest, or is likely to be placed  
21          under arrest as a result of the questioning, he or she shall be fully  
22          informed of all his or her rights as set forth above in subdivision (3)  
23          prior to the commencement of the questioning.
- 24          (8)    At the request of the officer under investigation, the officer shall have  
25          the right to be represented by legal counsel or by any other  
26          representative of his choice, who shall be allowed to be present at all  
27          times during questioning.
- 28          Sec. 3. Before the dismissal, demotion, suspension, or transfer for punitive  
29          reasons of a law enforcement officer, the employing agency shall:
- 30          (1)    Notify the office in writing of all charges, the basis thereof, and the  
31          action which may be taken against the officer;
- 32          (2)    Give the officer a meaningful opportunity, within a reasonable time  
33          limit after the date of the written notice provided for above, to respond  
34          orally and in writing to the charges. The period of time in which the  
35          officer may submit the response shall be determined by the employing  
36          agency, but in no event shall it be less than 10 working days from the  
37          officer's receipt of the written notification unless agreed to by the  
38          officer; and
- 39          (3)    In making his or her response, the officer may be assisted by a  
40          representative of his own choosing and at his own expense.

41          Sec. 4. (a)     If the law enforcement officer is adversely affected by the  
42          employing agency's final decision or that of the local civil service commission, if  
43          applicable, the officer may appeal to the superior court in the county where the officer is

1 employed or the employing agency is headquartered. The appeal must be taken within  
2 30 days after the law enforcement officer receives notice of the final decision.

3 (b) Except as otherwise specified in this section, any appeal from a final  
4 employing agency decision must be taken under the provisions of Article 4 of Chapter  
5 150A of the General Statutes (the Judicial Review Article of the North Carolina  
6 Administrative Procedure Act). Appeals shall also be subject to any relevant rules  
7 adopted or observed by the superior court of the county where the appeal is filed.

8 Sec. 5. (a) Officers may be suspended, but only if pay and benefits continue.  
9 If an officer commits a severe offense, he or she may be suspended then terminated  
10 summarily according to the provisions of local policy. Nothing in this act shall prevent  
11 the immediate suspension with pay of any law enforcement officer whose continued  
12 presence on the job is deemed to be a substantial and immediate threat to the welfare of  
13 his agency or the public, nor shall anything in this act prevent the suspension of an  
14 officer for refusing to obey a direct order issued in conformance with the agency's  
15 written and disseminated rules and regulations. In such case, the officer shall be  
16 afforded the rights provided for under this act, except that an officer's request to be  
17 heard by a complaint review board shall be made subsequent to the imposition of such  
18 suspension.

19 (b) The rights accorded law enforcement officers herein shall be minimum rights,  
20 and all agencies shall promulgate written grievance procedures not inconsistent  
21 herewith; provided that any agency may provide for rights of law enforcement officers  
22 in addition hereto.

23 (c) No law enforcement officer shall be discharged, disciplined, demoted, denied  
24 promotion, transferred, or reassigned, or otherwise discriminated against with regard to  
25 his employment, or be threatened with any such treatment, by reason of his exercise of  
26 the rights granted by this act.

27 (d) If any employing agency fails to comply with the requirements of this act, a  
28 law enforcement officer employed by such employing agency who is personally injured  
29 by such failure to comply may apply directly to the superior court of the county wherein  
30 such employing agency is headquartered and permanently resides for an injunction to  
31 restrain and enjoin such violation in whole or in part and to compel the performance of  
32 the duties imposed by this act. Should the court find that the employing agency has  
33 violated any provision of this act, said agency must pay the officer's reasonable  
34 attorneys' fees. The court, in its discretion, may award as exemplary damages up to  
35 three times the actual loss sustained by the officer.

36 Sec. 6. This act becomes effective October 1, 1993.