

HOUSE OF REPRESENTATIVES

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2017 REGULAR SESSION
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Amend printed copy of **SB 31/GA**

On page 25, after line 10, insert the following:

"➔Section 13. KRS 15.520 is amended to read as follows:

(1) As used in this section:

(a) "Citizen" means any individual who is not:

1. A member or supervisor within the law enforcement agency that employs an officer; or
2. An elected or appointed official within the unit of government under which the law enforcement agency that employs the officer is organized;

(b) "Complaint" means any statement by a citizen, whether written or verbal, that alleges any type of misconduct by an officer, including statements that are submitted or received anonymously;

(c) "Disciplinary action" means termination, demotion, a decrease in pay or grade, suspension without pay, and a written reprimand;

(d) "General employment policies" means the rules, regulations, policies, and procedures commonly applicable to the general workforce or civilian employees that are not unique to law enforcement activities or the exercise of peace officer authority, regardless of whether those rules, regulations, policies, and procedures exist or appear in a departmental manual or handbook that is solely applicable to a law enforcement

Amendment No. HFA 4

Rep. Rep. John Blanton

Committee Amendment _____

Signed: _____

Floor Amendment _____

LRC Drafter: Nays, Jennifer

Adopted: _____

Date: _____

Rejected: _____

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department or agency within the unit of government employing the officer;

- (e) "Interrogation" means a formal investigative interview and does not mean conversations or meetings of supervisory personnel and subordinate officers that are not intended to result in disciplinary action, such as conversations or meetings held for the purpose of providing corrective instruction counseling or coaching;
- (f) "Law enforcement procedures" means only those policies, rules, and customs that:
 1. Are specific to the conduct of officers in the exercise of law enforcement powers and functions, including, without limitation: use of force, conduct in the course of pursuits, conduct during stops or detentions of citizens, conduct in the course of interacting with, assisting, or questioning of citizens, and investigative conduct;
 2. Are carried out in the course of peace officer functions;
 3. Are not general employment policies; and
 4. May exist in either written form or in the form of unwritten standards, practices, or protocols generally accepted and applied in the law enforcement profession;
- (g) "Misconduct" means any act or omission by an officer that violates criminal law, law enforcement procedures, or the general employment policies of the employing agency; and
- (h) "Officer" means a person employed as a full-time peace officer by a unit of government that receives funds under KRS 15.410 to 15.510, **except a state officer listed in subsection (2)(a)2.b. to f. of Section 2 of this Act**, who has completed any officially established initial probationary period of employment lasting no longer than twelve (12) months not including, unless otherwise specified by the employing agency, any time the officer was employed and completing the basic training required by KRS 15.404.

Unofficial Document

- (2) In order to establish a minimum system of professional conduct for officers of local units of government of this Commonwealth, the following standards are stated as the intention of the General Assembly to deal fairly and set administrative due process rights in certain disciplinary matters concerning those officers of an employing unit of government that participates in the Kentucky Law Enforcement Foundation Program fund administered pursuant to KRS 15.430 and, at the same time, to provide a means for redress by the citizens of the Commonwealth for wrongs allegedly done to them by officers covered by this section.
- (3) Any complaint taken from a citizen alleging misconduct on the part of any officer shall be taken as follows:
 - (a) If the complaint alleges criminal activity by an officer, the allegations may be investigated without a signed, sworn complaint of the citizen;
 - (b) If the complaint alleges any other type of violation not constituting criminal activity, including violations of law enforcement procedures or the general employment policies of the employing agency, an affidavit, signed and sworn to by the citizen, shall be obtained, except as provided by paragraph (c) of this subsection; or
 - (c) If a complaint is required to be obtained and the citizen, upon request, refuses to make allegations under oath in the form of an affidavit, signed and sworn to, the employing agency may investigate the allegations, but shall bring charges under subsection (6) of this section against the officer only if the employing agency can independently substantiate the allegations absent the sworn statement of the citizen.
- (4) (a) When an officer is accused of an act or omission that would constitute a violation of law enforcement procedures by any individual within the law enforcement agency employing the officer, including supervisors and elected or appointed officials of the officer's employing agency, the employing agency shall conform the conduct of any

investigation to the provisions of subsection (5) of this section, shall formally charge the officer in accordance with subsection (6) of this section, and shall conduct a hearing in accordance with subsection (7) of this section before any disciplinary action shall be taken against the officer.

- (b) The provisions of this subsection shall not prevent the employing agency from suspending the officer, with or without pay, during an investigation and pending the final disposition of any formal charges, except that an officer suspended without pay shall be entitled to full back pay and benefits for the regular hours he or she would have worked if no formal charges are brought or the hearing authority finds the officer not guilty of the charges.
 - (c) An employing agency shall not be required to follow the provisions of this section in addressing conduct by the officer that would constitute a violation of the general employment policies of the employing agency.
- (5) (a) Any complaint filed by a citizen under subsection (3) of this section or any allegation of conduct that would constitute a violation of law enforcement procedures under subsection (4) of this section shall be investigated by the employing agency or another designated law enforcement agency in accordance with the provisions of this subsection if the employing agency determines that an investigation of the complaint or the alleged conduct is warranted.
- (b) No threats, promises, or coercions shall be used at any time against any officer while he or she is a suspect in a criminal case or has been accused of a violation of law enforcement procedures. Suspension from duty with or without pay, or reassignment to other than an officer's regular duties during the period shall not be deemed coercion. Prior to or within twenty-four (24) hours after suspending the officer pending investigation or disposition of a complaint, the officer shall be advised in

writing of the reasons for the suspension.

- (c) Unless otherwise agreed to in writing by the officer, no police officer shall be subjected to interrogation for alleged conduct that violates law enforcement procedures, until forty-eight (48) hours have expired from the time the request for interrogation is made to the accused officer, in writing. The notice of interrogation shall include a statement regarding any reason for the interrogation and shall be served on the officer by certified mail, return receipt requested, or by personal delivery.
 - (d) The interrogation shall be conducted while the officer is on duty. The officer may be required to submit a written report of the alleged incident if the request is made by the employing agency no later than the end of the subject officer's next tour of duty after the tour of duty during which the employing agency initially was made aware of the complaint.
 - (e) If an officer is under arrest, or likely to be arrested, or a suspect in any criminal investigation, he or she shall be afforded the same constitutional due process rights that are accorded to any civilian, including, but not limited to, the right to remain silent and the right to counsel, and shall be notified of those rights before any questioning commences.
- (6) (a) If it is determined through investigation or other means that the facts alleged in a citizen complaint or in an accusation of a violation of law enforcement procedures warrant charging the officer, the charge shall be made in writing with sufficient specificity so as to fully inform the officer of the nature and circumstances of the alleged violation in order that he or she may be able to properly defend himself or herself.
- (b) The charge shall be signed by a representative of the employing agency, shall set out

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- the disciplinary action recommended or imposed, and shall be served on the officer in writing by certified mail, return receipt requested, or by personal delivery.
- (c) When an officer has been charged with a violation of law enforcement procedures, no public statements shall be made concerning the alleged violation by any person or persons of the employing agency or the officer so charged, until final disposition of the charges.
 - (d) No officer as a condition of continued employment by the employing agency shall be compelled to speak or testify or be questioned by any person or body of a nongovernmental nature.
- (7) Unless waived by the charged officer in writing, a hearing shall be conducted by the officer's appointing authority to determine whether there is substantial evidence to prove the charges and to determine what, if any, disciplinary action shall be taken if substantial evidence does exist. In conducting a hearing, the following administrative due process rights shall be recognized and these shall be the minimum rights afforded any officer charged, except as otherwise agreed to in writing by the officer and the employing agency:
- (a) The accused officer shall be given at least twelve (12) days' written notice of any hearing. The notice of hearing shall be served on the officer by certified mail, return receipt requested, or by personal delivery;
 - (b) Copies of any sworn statements or affidavits to be considered by the hearing authority and any exculpatory statements or affidavits shall be furnished to the officer no less than twelve days (12) prior to the time of any hearing;
 - (c) At any hearing based upon the sworn complaint of a citizen, the citizen shall be notified to appear at the time and place of the hearing by certified mail, return receipt requested, or by personal delivery;
 - (d) If the return receipt has been returned unsigned, or the individual does not appear,

Unofficial Document

except due to circumstances beyond his or her control he or she cannot appear at the time and place of the hearing, any charge resulting from a complaint made by that citizen shall not be considered by the hearing authority and shall be dismissed with prejudice;

- (e) The accused officer shall have the right and opportunity to obtain and have counsel present, and to be represented by counsel;
- (f) The appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes shall subpoena and require the attendance of witnesses and the production by them of books, papers, records, and other documentary evidence at the request of the accused officer or the charging party. If any person fails or refuses to appear under the subpoena, or to testify, or to attend, or produce the books, papers, records, or other documentary evidence lawfully required, the appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes may report to the Circuit Court or any judge thereof the failure or refusal, and apply for a rule. The Circuit Court, or any judge thereof, may on the application compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court;
- (g) The accused officer shall be allowed to present witnesses and any documentary or other relevant evidence the officer wishes to provide to the hearing authority, and may cross-examine all witnesses called by the charging party;
- (h) If any officer who has been suspended with or without pay is not given a hearing as provided by this section within seventy-five (75) days of any charge being filed pursuant to this section, the charge shall be dismissed with prejudice and shall not be considered by any hearing authority and the officer shall be reinstated with full back pay and benefits;

- (i) Any officer who has been suspended without pay who is found not guilty of the charges by the hearing authority shall be reinstated with the full back pay and benefits for the regular hours he or she would have worked;
 - (j) The failure to provide any of the rights or to follow the provisions of this section may be raised by the officer with the hearing authority. The hearing authority shall not exclude proffered evidence based on failure to follow the requirements of this section but shall consider whether, because of the failure, the proffered evidence lacks weight or credibility and whether the officer has been materially prejudiced; and
 - (k) To the extent the provisions of KRS 61.805 to 61.850 are applicable, the hearing authority may conduct the hearing required by this subsection in a closed session, unless the officer requests of the hearing authority in writing at least three (3) days prior to the hearing that the hearing be open to the public.
- (8) (a) Any officer who is found guilty by any hearing authority of any charge, may bring an action in the Circuit Court in the county in which the employing agency is located within thirty (30) days of the date written findings are issued to appeal the action of the hearing authority. The appeal shall be initiated by the filing of a complaint in the same manner as any civil action under the Rules of Civil Procedure and shall include a copy of the hearing authority's final order. The Circuit Court review of the case shall be based solely upon the administrative record created before the hearing authority and any new evidence offered by the officer regarding alleged arbitrariness on the part of the hearing authority.
- (b) The judgment of the Circuit Court shall be subject to appeal to the Court of Appeals. The procedure as to appeal to the Court of Appeals shall be the same as in any civil action.
- (9) The provisions of KRS 90.310 to 90.410, 95.450, and 95.765 shall not apply in any

proposed disciplinary action arising from a citizen complaint made under subsection (3) of this section or arising from any allegation of conduct that would constitute a violation of law enforcement procedures under subsection (4) of this section. This section shall not be interpreted or construed to alter or impair any of the substantive rights provided to a city police officer under KRS 90.310 to 90.410, 95.450, and 95.765 for any proposed disciplinary action or other matters not arising under subsections (3) and (4) of this section, including proposed actions involving alleged violations of general employment policies. To the extent that the provisions of this section are inapplicable to any proposed disciplinary action against a city police officer, the provisions of KRS 90.310 to 90.410, 95.450, and 95.765 shall remain in full force and effect.

- (10) As the provisions of this section relate to a minimum system of professional conduct, nothing in this section shall be interpreted or construed to:
- (a) Limit or to in any way affect any rights previously afforded to officers of the Commonwealth by statute, collective bargaining or working agreement, or legally adopted ordinance;
 - (b) Preclude an employing agency from investigating and charging an officer both criminally and administratively;
 - (c) Prevent the suspension with or without pay or reassignment of an officer during an investigation and pending final disposition charges;
 - (d) Permit an employing agency to categorize and treat any complaint that originates from a citizen as an internal matter in order to avoid application of all of the provisions of this section to the final disposition of a citizen's complaint;
 - (e) Apply any disciplinary action required by this section to actions taken by an employing agency that is not related to misconduct by a law enforcement officer, such as personnel decisions made by the employing agency due to a lack of resources or

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personnel decisions related to a chief's management of a department; or

- (f) Prevent an employing agency from electing to apply the provisions of this section, or parts thereof, in circumstances that would not be covered under this section.
- (11) This section shall not apply to officers employed by a consolidated local government that receives funds under KRS 15.410 to 15.510, who shall instead be governed by the provisions of KRS 67C.326."