

SENATE BILL NO. 2368

Introduced by

Senators Watne, Dever

Representatives Hawken, Mahoney, Meier

1 A BILL for an Act to provide for a peace officers' bill of rights; and to provide a penalty.

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

3 **SECTION 1. Definitions.** For purposes of this Act:

4 1. "Peace officer" means a public servant authorized by law or by a government
5 agency or branch to enforce the law and to conduct or engage in investigations or
6 prosecutions for violations of law.

7 2. "Punitive action" means any action that leads to dismissal, demotion, suspension,
8 reduction in salary, written reprimand, or transfer for purposes of punishment.

9 **SECTION 2. Political activity.**

10 1. Except as otherwise provided by law, or whenever on duty or in uniform, no peace
11 officer may be prohibited from engaging, or be coerced or required to engage, in
12 political activity.

13 2. No peace officer may be prohibited from seeking election to, or serving as a
14 member of, the governing board of a school district.

15 **SECTION 3. Interrogation and investigation rights.** When any peace officer is under
16 investigation and subjected to interrogation by the peace officer's commanding officer, or any
17 other member of the peace officer's employing department, which could lead to punitive action,
18 the interrogation must be conducted under the following conditions:

19 1. The peace officer under investigation must be informed of the nature of the
20 investigation before any interrogation.

21 2. The interrogation must be conducted at a reasonable hour, preferably at a time
22 when the peace officer is on duty, or during the normal waking hours for the peace
23 officer, unless the seriousness of the investigation requires otherwise. If the
24 interrogation does occur during off-duty time of the peace officer being

interrogated, the peace officer must be compensated for any off-duty time in accordance with regular department procedures, and the peace officer may not be released from employment for any work missed.

3. The peace officer under investigation must be informed before the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation.

All questions directed to the peace officer under interrogation must be asked by and through no more than two interrogators at any one time.

4. The interrogating session must be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The peace officer under interrogation must be allowed to attend to the peace officer's own personal physical necessities, however that officer may be escorted or observed.

5. The peace officer under interrogation may not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations must be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward may be made as an inducement to answering any question. The employer may not cause the peace officer under interrogation to be subjected to visits by the press or news media without the peace officer's express consent nor may the peace officer's home address or photograph be given to the press or news media without the peace officer's express consent.

6. No statement made during interrogation by a peace officer under duress, coercion, or threat of punitive action is admissible in any subsequent civil proceeding. This subsection does not:

- a. Limit the use of statements made by a peace officer when the employing department is seeking civil sanctions against any peace officer, including disciplinary action; or
- b. Prevent the admissibility of statements made by the peace officer under interrogation in any civil action, including administrative actions, brought by that peace officer, or that officer's exclusive representative, arising out of a disciplinary action.

- 1 7. The complete interrogation of a peace officer may be recorded. If a tape recording
2 is made of the interrogation, the peace officer must be permitted access to the tape
3 if any further proceedings are contemplated or before any further interrogation at a
4 subsequent time. The peace officer is entitled to a transcribed copy of any notes
5 made by a stenographer or to any reports or complaints made by investigators or
6 other persons, except those which are deemed by the investigating agency to be
7 confidential. No notes or reports that are deemed to be confidential may be
8 entered in the officer's personnel file. The peace officer being interrogated must be
9 permitted to use the peace officer's own recording device and record any and all
10 aspects of the interrogation.
- 11 8. If, before or during the interrogation of a peace officer, it is determined that the
12 peace officer may be charged with a criminal offense, the peace officer must be
13 immediately informed of the peace officer's constitutional rights.
- 14 9. No peace officer may be loaned or temporarily reassigned to a location or duty
15 assignment if a sworn member of the officer's department would not normally be
16 sent to that location or would not normally be given that duty assignment under
17 similar circumstances.

18 **SECTION 4. Administrative appeal.**

- 19 1. No peace officer may be subjected to punitive action, or denied promotion, or be
20 threatened with any such treatment, because of the lawful exercise of the rights
21 granted under this Act, or the exercise of any rights under any existing
22 administrative grievance procedure. This section does not preclude a head of an
23 agency from ordering a peace officer to cooperate with other agencies involved in
24 criminal investigations. If an officer fails to comply with the order, the agency may
25 officially charge the officer with insubordination.
- 26 2. No punitive action, nor denial of promotion on grounds other than merit, may be
27 undertaken by any public agency against any peace officer who has successfully
28 completed the probationary period that may be required by the peace officer's
29 employing agency without providing the peace officer with an opportunity for
30 administrative appeal.

- 1 3. No chief of police may be removed by a public agency, or appointing authority,
2 without providing the chief of police with written notice, the reason for the removal,
3 and an opportunity for administrative appeal. For purposes of this subsection, the
4 removal of a chief of police by a public agency or appointing authority, for the
5 purpose of implementing the goals or policies, or both, of the public agency or
6 appointing authority, for reasons including incompatibility of management styles or
7 as a result of a change in administration, is sufficient reason. Nothing in this
8 subsection may be construed to create a property interest, if one does not exist by
9 rule or law, in the job of chief of police.
- 10 4. Except as provided in this subsection and subsection 7, no punitive action or denial
11 of promotion on grounds other than merit may be undertaken for any act, omission,
12 or other allegation of misconduct if the investigation of the allegation is not
13 completed within one year of the public agency's discovery by a person authorized
14 to initiate an investigation of the allegation of an act, omission, or other misconduct.
15 This one-year limitation period applies only if the act, omission, or other
16 misconduct occurred after July 31, 2001. If the public agency determines that
17 discipline may be taken, the agency must complete its investigation and notify the
18 peace officer of its proposed disciplinary action within that year, except in any of
19 the following circumstances:
- 20 a. If the act, omission, or other allegation of misconduct is also the subject of a
21 criminal investigation or criminal prosecution, the time during which the
22 criminal investigation or criminal prosecution is pending tolls the one-year time
23 period.
- 24 b. If the peace officer waives the one-year time period in writing, the time period
25 is tolled for the period of time specified in the written waiver.
- 26 c. If the investigation is a multijurisdictional investigation that requires a
27 reasonable extension for coordination of the involved agencies.
- 28 d. If the investigation involves more than one employee and requires a
29 reasonable extension.
- 30 e. If the investigation involves an employee who is incapacitated or otherwise
31 unavailable.

f. If the investigation involves a matter in civil litigation where the peace officer is named as a party defendant, the one-year time period is tolled while that civil action is pending.

g. If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period is tolled during the period of that defendant's criminal investigation and prosecution.

h. If the investigation involves an allegation of workers' compensation fraud on the part of the peace officer.

5. If a predisciplinary response or grievance procedure is required or utilized, the time for this response or procedure is not governed or limited by this Act.

6. If, after investigation and any predisciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the peace officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within thirty days of its decision, except if the peace officer is unavailable for discipline.

7. Notwithstanding the one-year time period specified in subsection 4, an investigation may be reopened against a peace officer if the following circumstances exist:

a. Significant new evidence has been discovered that is likely to affect the outcome of the investigation; and

b. One of the following conditions exist:

(1) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.

(2) The evidence resulted from the peace officer's predisciplinary response or procedure.

SECTION 5. Freedom from retaliation. An administrative appeal instituted by a peace officer under this Act must be conducted in conformance with rules and procedures adopted by the local public agency.

SECTION 6. Entries in personnel files.

1. No peace officer may have any comment adverse to the officer's interest entered in the officer's personnel file, or any other file used for any personnel purposes by the officer's employer, without the peace officer having first read and signed the instrument containing the adverse comment indicating the officer is aware of the comment, except that the entry may be made if after reading the instrument the peace officer refuses to sign it. If a peace officer refuses to sign, that fact must be noted on that document.
2. A peace officer has thirty days within which to file a written response to any adverse comment entered in the officer's personnel file. The written response must be attached to, and must accompany, the adverse comment.

SECTION 7. Polygraph examinations - Use of photographs.

1. No peace officer may be required as a condition of employment by the officer's employing department or other public agency to consent to the use of the officer's photograph or identity as a peace officer on the internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or the officer's family. No employing department or other public agency may release a photograph of a peace officer without the officer's consent.
2. Based upon the peace officer's reasonable belief that the disclosure of the officer's photograph or identity as a peace officer on the internet as described in subsection 1 may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. After the notification to cease and desist, the officer or a state's attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the internet of the peace officer's photograph or identity as a peace officer. The court may impose a civil penalty in an amount not to exceed five hundred dollars per day commencing two working days after the date of receipt of the notification to cease and desist.

SECTION 8. Financial disclosure. No peace officer may be required or requested for purposes of job assignment or other personnel action to disclose any item of the officer's property, income, assets, source of income, debts or personal or domestic expenditures,

1 including those of any member of the peace officer's family or household, unless that
2 information is obtained or required under state law or proper legal procedure, tends to indicate
3 a conflict of interest with respect to the performance of the officer's official duties, or is
4 necessary for the employing agency to ascertain the desirability of assigning the peace officer
5 to a specialized unit in which there is a strong possibility that bribes or other improper
6 inducements may be offered.

7 **SECTION 9. Legal remedies.**

- 8 1. It is unlawful for any department to deny or refuse to any peace officer the rights
9 and protections provided by this Act.
- 10 2. The district court has initial jurisdiction over any proceeding brought by any peace
11 officer against any law enforcement department or agency for any alleged violation
12 of this Act.
- 13 3. In any case where the court finds that a law enforcement department has violated
14 this Act, the court shall render appropriate injunctive or other extraordinary relief to
15 remedy the violation and to prevent future violations of a like or similar nature,
16 including the granting of a temporary restraining order or a preliminary or
17 permanent injunction prohibiting the law enforcement department or agency from
18 taking any punitive action against the peace officer.

19 **SECTION 10. Exceptions for agencies adopting same or better protections.** Any
20 public law enforcement department or agency that has adopted, through action of its governing
21 body or its official designee, any procedure which at a minimum provides to peace officers the
22 same rights or protections provided in this Act is not required to be subject to this Act with
23 regard to that procedure.

24 **SECTION 11. Mutual aid agreements - Multijurisdictional cooperation.** This Act
25 does not limit the use of any law enforcement agency or any peace officer in the fulfilling of
26 mutual aid agreements with other jurisdictions or agencies, nor does this Act limit any
27 jurisdictional or interagency cooperation.