

HOUSE BILL ANALYSIS

HB 1506

Title: An act relating to a bill of rights for peace officers.

Brief Description: Creating a bill of rights for peace officers.

Sponsors: Representatives Robertson and O'Brien.

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

Staff: Yvonne Walker (786-7841)

Background: The rights of police officers who are being investigated are protected in several ways. In Washington, if a police force is unionized then generally a bill of rights— is worked out by agreement between the union and the department. Some municipalities or counties may also have passed ordinances defining these rights. Further, police officers in general, have certain constitutional rights based on the Fifth Amendment to the United States Constitution. The United States Supreme Court has held that a public employer may discharge an employee for refusing to answer specific questions relating to officials duties only after advising that employee that failure to answer may result in dismissal and that any answers that are obtained from the employee cannot be used against him or her in criminal proceedings.

Summary: The term "peace officer" includes all duly appointed city, county, and state law enforcement officers.

All officers who become the subject of a police investigation must be advised, in writing, prior to the time the investigation commences, that the officer is suspected of either committing a criminal offense or that their conduct is grounds for termination, suspension, or disciplinary action.

Officers who become the subject of a criminal investigation must be notified that they are the subject of a criminal investigation and that they do not have to answer any questions or to remain in an interview setting involuntarily.

When officers are charged with a criminal case and the employer orders the officer to answer questions, or in any noncriminal investigation, all interviews must take place and be completed within a reasonable time, when the peace officer is on duty, unless there is an emergency situation. In addition, officers:

- must be advised of their right to representation and permitted the opportunity to contact and consult with a labor representative and their attorney. Counsel may be present during the interrogation, but may not participate in the interrogation except to advise

- the peace officer.
- must be informed in writing whether they are witnesses or suspects, before any interview commences. All officers that are considered suspects must be told in writing of the alleged complaint before any interview begins.
- at their request, may have the interview recorded. Interviews must not contain any "off the record" questions and must be limited in scope to activities, circumstances, or events which pertain to the officer's conduct. Officers may obtain a copy of any written statement they have signed or a transcript of the interview.
- may be permitted to have as many intermissions during the interview as they shall reasonably request for consultation with their attorney or labor representative, to attend to personal necessities, meals, telephone calls, and rest periods.
- cannot be threatened with dismissal or other disciplinary punishment as a guise to attempt to obtain their resignation, nor shall they be subjected to any offensive language or intimidation in any other manner. Promises and rewards cannot be made as an inducement for the accused officer to answer questions.

Officers are not required to unwillingly answer questions which would take away their protections under the constitution amendment relating to self-incrimination. In addition, the employer cannot request an officer to take a polygraph test without advising that officer that his or her refusal to take such a test may not be considered as evidence in any subsequent judicial or administrative proceeding without the officer's consent. No polygraph evidence of any kind will be admissible in disciplinary proceedings except by stipulation of the parties.

Internal investigation files that do not result in specific findings of misconduct must not be included in that officer's personnel file, be considered a public record, or form the basis of peace officer discipline. Statements from witness officers must be sealed from public viewing.

Upon an officer's request, all written reprimands must be deleted from that officer's personnel files after a minimum period of three years and in more serious discipline cases they must expunged from personnel files after five years, if there is no recurrence of similar misconduct for which the officer was disciplined during that period. Employers are not required to destroy any employment records necessary to the employer's case if it is engaged in litigation in any way related to that officer's employment at the time those records would otherwise be destroyed.

Require the Exercise of Rule- Making Powers: No

Fiscal Note: Requested on February 4, 1997.

Effective Date: Ninety days after adjournment of session in which bill is passed.