



**House
Legislative
Analysis
Section**

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**LAW ENFORCEMENT PERSONNEL;
DISCLOSURE**

**House Bill 5314 (Substitute H-1)
First Analysis (2-20-02)**

**Sponsor: Rep. Jennifer Faunce
Committee: Employment Relations,
Training and Safety**

THE APPARENT PROBLEM:

Many experienced police officers or deputy sheriffs have been faced with the unsettling prospect of being interviewed as a part of an internal affairs investigation. In most departments, three principles appear well settled, in instances in which an officer has been protected from criminal charges: an officer can be ordered to participate in the investigation; an officer can be required to give a statement--oral or written and at times recorded, transcribed and sworn; and, whatever statements are made may be used against the office in later disciplinary proceedings, but without the fear of criminal charges.

The rules governing police conduct in these matters developed under a case known as *Garrity v New Jersey*, 385 US 493 (1967). In that case the U.S. Supreme Court faced the issue of how the Fifth Amendment's protections against compulsory self-incrimination applied in a public employee disciplinary setting. In *Garrity*, police officers were questioned during the course of a state investigation concerning alleged ticket fixing. The officers were ordered to respond to the investigator's questions, and were informed that a refusal to respond to the questions would result in their discharge from employment. The officers answered the questions, and their answers were later used to convict them of criminal prosecutions. The Supreme Court ruled that the use of the officers' statements in criminal proceedings violated the Fifth Amendment's guarantee that citizens cannot be compelled to be witnesses against themselves. See *BACKGROUND INFORMATION* below.

Generally, officers know that as a condition of employment they can be required to answer questions about fellow officers and submit reports to investigating officers, or risk disciplinary action for refusal to obey. Many do not know that what they say can be released without their knowledge to third parties outside the investigation. To prevent the

release of their statements without their written approval, legislation has been introduced.

THE CONTENT OF THE BILL:

House Bill 5314 would amend the Bullard-Plawecki Employee Right to Know Act to specify that in the instance an employer is a criminal justice agency and the employee is a police officer, then statements made by the employee under threat of discharge for remaining silent would create a privilege held by the employee making the statements, and would be privileged. Further, those statements could not be released or divulged to a third party without the employee's written consent. Currently, an employer is prohibited from divulging a disciplinary report, letter of reprimand, or other disciplinary action to a third party, without written notice, unless the employee has specifically waived written notice, or the disclosure is ordered in a legal action or arbitration. Under the bill, "police officer" is defined to mean a peace officer trained and certified under the Commission on Law Enforcement Standards Act.

MCL 423.501 to 423.512

BACKGROUND INFORMATION:

In *Garrity v New Jersey* the Supreme Court ruled that the use of the officers' statements in criminal proceedings violated the Fifth Amendment's guarantee that citizens cannot be compelled to be witnesses against themselves. The court held the "the choice imposed on the officers was one between self-incrimination or job forfeiture," a choice the court termed "coercion." In particularly strong language, the court held that "policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights," and ruled that statements which a law enforcement officer is compelled to make under threat of possible forfeiture of his or her

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job could not subsequently be used against the officer in a criminal prosecution.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Officials in Clinton Township of Macomb County report they recently have received subpoena and/or discovery requests by third parties to review police officers' so-called "Garrity" statements. The statements are transcriptions or summaries of interviews conducted by a police department's internal affairs investigators, undertaken in order to learn about the possibility of wrong-doing by police officers. Generally, the statements are required by police management, and they are given by the officers in confidence. In one incident in southeastern Michigan, however, reporters from the press requested information under the Freedom of Information Act about an internal investigation of police brutality, and the statements made by officers during the internal affairs investigation were released and printed in the newspaper. Both police officers and police management officials fear that public release of these sensitive statements to third parties will limit officers' willingness to cooperate with internal affairs investigations. This bill would ensure that "Garrity" statements would not be disclosed to third parties unless an officer had given his written consent.

Against:

The Freedom of Information Act guarantees that the business of government, including the business of police departments, is conducted in the open, and subject to the scrutiny of the press. This freedom of access to official documents should not be abridged.

Response:

The legislature has previously recognized the sensitive nature of this type of information. That is why personnel matters are not released under Freedom of Information requests, unless an employee agrees to the release of his or her records.

POSITIONS:

The Fraternal Order of Police supports the bill. (2-20-02)

The Michigan State Police Troopers Association supports the bill. (2-19-02)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.