

# SENATE BILL No. 25

January 30, 2001, Introduced by Senators DINGELL, MC COTTER, BYRUM and HOFFMAN and referred to the Committee on Judiciary.

A bill to create a law enforcement officers' bill of rights; to define terms and conditions of disciplinary investigations; to create a cause of action for violations; to protect certain political activity; and to provide for civil remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. This act may be known and cited as the "law  
2 enforcement officers' bill of rights act".

3       Sec. 3. As used in this act:

4       (a) "Advocate" means an individual who prosecutes or defends  
5 the charges against a law enforcement officer at a disciplinary  
6 hearing.

7       (b) "Disciplinary action" means a sanction or punishment  
8 imposed upon a law enforcement officer for conduct that violates  
9 a statute, ordinance, published administrative rule, regulation,  
10 or procedure.

1 (c) "Disciplinary hearing" means the forum in which the  
2 allegations of misconduct are heard and the evidence relevant to  
3 the misconduct is presented.

4 (d) "Internal investigation" means an inquiry into the work  
5 related activity of a law enforcement officer by 1 or more law  
6 enforcement agency investigators to determine whether the officer  
7 violated a rule, order, or procedure of the law enforcement  
8 agency.

9 (e) "Law enforcement agency" means a state, county, town-  
10 ship, city, or village public agency that is charged with the  
11 duty of preventing crime and detecting and arresting individuals  
12 for violations of criminal law.

13 (f) "Law enforcement officer" or "officer" means an employee  
14 of a state, county, township, city, or village law enforcement  
15 agency who has taken an oath of office and whose duties are to  
16 enforce criminal laws.

17 (g) "Summary punishment" means a sanction without a hearing  
18 imposed on a law enforcement officer by a superior authority  
19 within a law enforcement agency for a violation of 1 or more of  
20 the agency's rules, orders, or procedures. Summary punishment  
21 does not include a termination of employment, suspension, demo-  
22 tion, transfer, or a reduction in pay or a loss of any other  
23 financial employment benefit.

24 Sec. 5. This act does not apply to either of the  
25 following:

26 (a) A criminal investigation of a law enforcement officer's  
27 conduct.

1 (b) A nondisciplinary investigation concerning the job  
2 performance activities of a law enforcement officer.

3 Sec. 7. If a law enforcement officer is under investigation  
4 that could lead to disciplinary action, all of the following  
5 apply:

6 (a) The law enforcement agency conducting the investigation  
7 shall notify the officer of the investigation before questioning  
8 the officer. The notice shall identify the nature and scope of  
9 the investigation and all violations of law, rules, regulations,  
10 or procedures for which reasonable suspicion exists.

11 (b) If the complaint is made by a person from outside the  
12 law enforcement agency, the complaint shall not be investigated  
13 unless the complainant signs a detailed statement. The complaint  
14 shall be investigated within 15 days from the date of receipt.

15 (c) The individual in charge of the investigation shall  
16 notify the law enforcement officer under investigation of the  
17 results of the investigation and whether any recommendations for  
18 disciplinary action are made.

19 Sec. 9. A law enforcement officer is entitled to counsel or  
20 a person of his or her choice during questioning. The law  
21 enforcement officer may consent in writing to questioning without  
22 counsel.

23 Sec. 11. A law enforcement officer who is under investiga-  
24 tion for conduct that could lead to disciplinary action may be  
25 questioned only under the following conditions:

26 (a) At a reasonable hour and while the officer is on duty,  
27 unless exigent circumstances exist.

1 (b) At the place where the law enforcement officer reports  
2 to duty, unless the law enforcement officer consents in writing  
3 to another place.

4 (c) The law enforcement officer is told the name, rank, and  
5 position of the individual who will question him or her before  
6 the questioning begins.

7 (d) The law enforcement officer is questioned by only 1  
8 individual at a time during a questioning period.

9 (e) The law enforcement officer is told the nature of the  
10 investigation before being questioned.

11 (f) The law enforcement officer is questioned only for a  
12 reasonable period of time and is provided time for rest and phys-  
13 ical bodily functions.

14 (g) The person questioning the law enforcement officer does  
15 not threaten or make a promise to induce an answer to a  
16 question.

17 (h) The questioning is fully transcribed or fully recorded  
18 electronically by audiotape or audio-videotape, and a copy of the  
19 transcription or recording is given to the law enforcement offi-  
20 cer within a reasonable time.

21 Sec. 13. (1) If an internal investigation of a law enforce-  
22 ment officer results in a recommendation for disciplinary action,  
23 the law enforcement agency making the recommendation shall notify  
24 the officer of the right to a hearing before a hearing officer or  
25 board as determined by the law enforcement agency.

26 (2) A law enforcement agency shall not take disciplinary  
27 action before a hearing is held.

1 (c) A law enforcement agency may take disciplinary action  
2 against a law enforcement officer only after a hearing officer or  
3 board finds that the law enforcement officer violated a statute,  
4 ordinance, published administrative rule, regulation, or  
5 procedure.

6 Sec. 15. Charges against a law enforcement officer shall  
7 not be filed more than 90 days after the beginning of a disci-  
8 plinary investigation.

9 Sec. 17. Not less than 30 days before charges are filed  
10 against a law enforcement officer, a law enforcement agency shall  
11 provide the officer with actual written notice of all of the  
12 following:

13 (a) The name and mailing address of the hearing officer or  
14 board assigned to conduct the disciplinary hearing.

15 (b) The name, rank, and command of the advocate for the law  
16 enforcement agency if the advocate is a law enforcement officer.

17 (c) The name and mailing address of the advocate for the law  
18 enforcement agency if that advocate is not a law enforcement  
19 officer.

20 Sec. 19. A law enforcement officer is entitled to have an  
21 attorney or a person of his or her choice represent him or her at  
22 a disciplinary hearing.

23 Sec. 21. The law enforcement agency shall determine the  
24 composition of the disciplinary hearing board and the procedures  
25 for the conduct of the hearing. If the disciplinary hearing  
26 board is composed of more than 1 law enforcement officer, 1 of

1 the board members shall be of the same rank as that of the law  
2 enforcement officer who is the subject of the hearing.

3       Sec. 23. A law enforcement agency shall make all evidence  
4 that is intended to be used by the law enforcement agency against  
5 a law enforcement officer available for the law enforcement  
6 officer's inspection not less than 15 days before the disci-  
7 plinary hearing.

8       Sec. 25. Not less than 15 days before the hearing, the law  
9 enforcement agency shall provide the officer with the name of  
10 each witness to be called by the law enforcement agency to tes-  
11 tify against a law enforcement officer.

12       Sec. 27. Except for information received from confidential  
13 informants, who provided the information under an agreement of  
14 confidentiality, a copy of any investigative report shall be made  
15 available to the law enforcement officer who is the subject of  
16 the investigation not less than 15 days before the disciplinary  
17 hearing.

18       Sec. 29. A law enforcement agency may not compel an officer  
19 under a disciplinary investigation to disclose items of personal  
20 property or provide information about personal income, assets, or  
21 debts or that of the law enforcement officer's family unless  
22 either of the following conditions is met:

23       (a) The information is necessary to the investigation of an  
24 alleged violation of a federal or state law or an alleged viola-  
25 tion of an ordinance of a political subdivision of this state.

26       (b) Disclosure is required by federal or state law or by an  
27 ordinance of a political subdivision of this state.

1           Sec. 31. This act does not affect a collective bargaining  
2 agreement between a law enforcement agency and an officer's bar-  
3 gaining unit that is in effect on the effective date of this  
4 act.

5           Sec. 33. A hearing board or hearing officer is authorized  
6 to issue a summons to compel the appearance of a witness on  
7 behalf of a law enforcement officer. A hearing board or hearing  
8 officer may petition the circuit court to compel appearance  
9 before the board or hearing officer.

10          Sec. 35. A disciplinary hearing is not open to the public  
11 unless the law enforcement officer who is the subject of the  
12 hearing requests, in writing, that the hearing be open to the  
13 public or open only to certain individuals.

14          Sec. 37. A law enforcement agency conducting a disciplinary  
15 hearing shall do at least all of the following:

16           (a) Fully transcribe the hearing or fully record the hearing  
17 on audiotape or audio-videotape.

18           (b) Sequester witnesses throughout the hearing if requested  
19 by the officer who is the subject of the hearing.

20           (c) Require a witness to take an oath or make an affirmation  
21 before testifying and advise the witness that he or she is  
22 subject to the penalty for perjury for knowingly testifying  
23 falsely.

24          Sec. 39. After a disciplinary hearing has been completed, a  
25 hearing board or hearing officer shall render a decision on each  
26 charge.

1        Sec. 41. If a charge is based on fraud, false  
2 representation, dishonesty, deceit, or criminal behavior, the  
3 hearing board or hearing officer shall make a determination on  
4 the basis of clear and convincing evidence. If the charge is  
5 based on any other behavior, the hearing board or hearing officer  
6 shall make a determination on the basis of a preponderance of the  
7 evidence.

8        Sec. 43. If a hearing board or hearing officer determines  
9 that a law enforcement officer is not responsible for a violation  
10 of a statute, ordinance, published administrative rule, regula-  
11 tion, or procedure, the law enforcement agency shall not take  
12 disciplinary action against that officer.

13        Sec. 45. If a hearing board or hearing officer determines  
14 that a law enforcement officer is responsible for a violation of  
15 a statute, ordinance, published administrative rule, regulation,  
16 or procedure, the hearing board or hearing officer shall recom-  
17 mend, in writing, the punishment to be imposed.

18        Sec. 47. A law enforcement officer may appeal a final  
19 determination of a law enforcement agency in the circuit court in  
20 the county where the law enforcement agency is located. If the  
21 law enforcement agency is an agency of the state, the action  
22 shall be filed in the circuit court in the county where the law  
23 enforcement officer reports to duty.

24        Sec. 49. A law enforcement officer shall not waive a right  
25 conferred upon him or her under this act unless the waiver is  
26 expressly authorized by this act.



1        Sec. 51. Notwithstanding any other provision of this act, a  
2 law enforcement agency may administer summary punishment or  
3 temporarily suspend a law enforcement officer from duty in an  
4 emergency situation, to protect the safety of the law enforcement  
5 officer or the safety of the public. If a law enforcement offi-  
6 cer is temporarily suspended under this section, an employment  
7 benefit shall not be altered during the temporary suspension.

8        Sec. 53. A law enforcement agency shall not retaliate  
9 against a law enforcement officer for exercising a right granted  
10 by this act.

11       Sec. 55. This act does not impair or alter a right or  
12 remedy that a law enforcement officer has under any other law,  
13 rule, or pertinent collective bargaining agreement.

14       Sec. 57. A law enforcement officer may file an action in  
15 the circuit court in the county where the law enforcement agency  
16 is located for an order or injunction to prevent a law enforce-  
17 ment agency from violating this act. If the law enforcement  
18 officer prevails in the action, he or she may recover compensa-  
19 tory damages and reasonable attorney fees.

20       Sec. 59. If a law enforcement agency places adverse mate-  
21 rial in a law enforcement officer's personnel file or has posses-  
22 sion or control over adverse material about a law enforcement  
23 officer, the law enforcement agency shall provide the officer  
24 with an opportunity to review the adverse material and provide a  
25 written comment on the adverse material.

26       Sec. 61. The provisions of this act are in addition to and  
27 do not affect any other right provided by law.

1        Sec. 63. A law enforcement agency shall not prohibit an  
2 officer from engaging in or refraining from political activity  
3 during any period in which the officer is off duty or not acting  
4 in an official capacity. This section does not apply to the head  
5 of a law enforcement agency who serves at the pleasure of the  
6 chief executive of the state or a political subdivision of the  
7 state.