

BATON ROUGE POLICE DEPARTMENT

General Order
No.116

Effective Date
11-01-1994

Revised Date
10-16-2019

Subject: Police Officers' Bill of Rights

Reviewed 10/10/19

POLICY

The "Rights of Law Enforcement Officer While Under Investigation," enacted by the Louisiana Legislature in 1985 and amended several times since then, are found in La. R.S. 40:2531-2535 and are often referred to as the "Police Officers' Bill of Rights." Supervisors and Internal Affairs investigators shall familiarize themselves with the requirements of these statutes and shall strictly comply with these provisions when investigating any subordinate or other officer. The policy of the Department shall be to comply with these provisions of law, as well as any other provisions agreed upon in signed contracts between the City and the Union, when there are investigations of misconduct against officers.

RIGHTS OF LAW ENFORCEMENT OFFICERS WHILE UNDER INVESTIGATION

La. R.S. 40:2531 through 40:2535 (Chapter 25 of Title 40 of the Louisiana Revised Statutes) provides as follows:

- I. **40:2531. Applicability; minimum standards during investigation; penalties for failure to comply**
 - A. The provisions of this Chapter shall only apply to police employees as defined in La. R.S. 40:1372(5) and to those law enforcement officers employed by any municipality and campus police employed at any state-supported college or university who are under investigation with a view to possible disciplinary action, demotion or dismissal.
 - B. Whenever a police employee or law enforcement officer is under investigation, the following minimum standards shall apply:
 1. The police employee or law enforcement officer being investigated shall be informed, at the commencement of interrogation, of the nature of the investigation and the identity and authority of the person conducting such investigation. At the commencement of any interrogation, such officer shall be informed as to the identity of all persons present during such interrogation. The police employee or law enforcement officer shall be allowed to take notes.
 2. Any interrogation of a police employee or law enforcement officer in connection with an investigation shall be for a reasonable period of time and shall allow for reasonable periods of rest and personal necessities of such police employee or law enforcement officer.
 3. All interrogations of any police employee or law enforcement officer in connection with the investigation shall be recorded in full. The police employee or law enforcement officer shall not be prohibited from obtaining a copy of the recording or transcript of the recording of his statements upon his written request.

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4. The police employee or law enforcement officer being questioned, whether as a target or as a witness in an administrative investigation, shall have the right to be represented by counsel, other representative, or both, of the police employee or law enforcement officer's choice.
 - a. The police employee or law enforcement officer shall be granted up to thirty (30) days to secure such representation, during which time all questioning shall be suspended.
 - b. If a police employee or law enforcement officer is involved in an officer-involved incident, the police employee or law enforcement officer shall be granted up to fourteen days to secure representation, during which time all questioning shall be suspended. However, if the police employee or law enforcement officer is confined to a medical facility due to injury or illness related to the officer-involved incident, or if two or more police employees or law enforcement officers are involved in the officer-involved incident, the police employees or law enforcement officers shall be granted up to thirty days to secure representation.
 - c. For purposes of this Subparagraph, "officer-involved incident" means any incident in which serious bodily injury or death of another individual is caused by any intentional or accidental use of a dangerous or deadly weapon by a police employee or law enforcement officer which results from the efforts of a police employee or law enforcement officer attempting to effectively arrest or otherwise gain control of another or while in police custody.
 - d. For purposes of this Subparagraph, "serious bodily injury" means bodily injury which involves unconsciousness, extreme physical pain, protracted or obvious disfigurement, protracted loss or impairment of a bodily member, organ, or mental faculty, or a substantial risk of death.
 - e. The police employee or law enforcement officer's representative or counsel shall be allowed to offer advice to the employee or officer and make statements on the record regarding any question asked of the employee or officer at any interrogation, interview or hearing in the course of the investigation.
5. No statement made by the police employee or law enforcement officer during the course of an administrative investigation shall be admissible in a criminal proceeding.
6. Repealed
7. When a formal and written complaint is made against any police employee or law enforcement officer, the superintendent of state police or the Chief of Police or his authorized representative shall initiate an investigation within fourteen (14) days of the date the complaint is made. Except as otherwise provided in this Paragraph; each investigation of a police employee or law enforcement officer, which is conducted under the provisions of this Chapter shall be completed within sixty (60) days. However, in each municipality which is subject to a Municipal Fire and Police Civil Service law, the municipal police department may petition the Municipal Fire and Police Civil

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Service Board for an extension of the time within which to complete the investigation. The board shall set the matter for hearing and shall provide notice of the hearing to the police employee or law enforcement officer who is under investigation. The police employee or law enforcement officer who is under investigation shall have the right to attend the hearing and to present evidence and arguments against the extension. If the board finds that the municipal police department has shown good cause for the granting of an extension of time within which to complete the investigation, the board shall grant an extension of up to sixty (60) days. Nothing contained in this Paragraph shall be construed to prohibit the police employee or law enforcement officer under investigation and the appointing authority from entering into a written agreement extending the investigation for up to an additional sixty (60) days. The investigation shall be considered complete upon notice to the police employee or law enforcement officer under investigation of a pre-disciplinary hearing or a determination of an unfounded or unsustained complaint. Further, nothing in this Paragraph shall limit any investigation of alleged criminal activity.

8. In the case of a police employee who is a member of the State Police Service as set forth in Article X, Section 41 of the Louisiana Constitution of 1974, the appointing authority may petition the State Police Commission, or its executive director, for an extension of the time within which to complete the investigation. The State Police Commission, or its executive director, shall set the matter for hearing and shall provide notice of the hearing to the police employee who is under investigation. The police employee who is under investigation shall have the right to attend the hearing and to present evidence and arguments against the extension. If the State Police Commission, or its executive director, finds that the appointing authority has shown good cause for the granting of an extension of time within which to complete the investigation, the State Police Commission, or its executive director, shall grant an extension of up to sixty days. Nothing contained in this Paragraph shall be construed to prohibit the police employee under investigation and the appointing authority from entering into a written agreement extending the investigation for up to an additional sixty days. The investigation shall be considered complete upon determination of the appointing authority to institute disciplinary action against the police employee or a determination of an unfounded or unsustained complaint. Nothing in this Paragraph shall limit any investigation of alleged criminal activity.
- C. There shall be no discipline, demotion, dismissal or adverse action of any sort taken against a police employee or law enforcement officer unless the investigation being conducted in accordance with the minimal standards provided for in this Section. Any discipline, demotion, dismissal or adverse action of any sort whatsoever taken against a police employee or law enforcement officer without complete compliance with the foregoing minimum standards is an absolute nullity.

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II. 40:2532. Release of personal information

No person, agency or department shall release to the news media, press or any other public information agency, a police employee or law enforcement officer's home address, photograph, or any information that may be deemed otherwise confidential, without the express written consent of the law enforcement officer, with respect to an investigation of the police employee or law enforcement officer.

III. 40:2533. Personnel files

- A. No police employee or law enforcement officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the police employee or law enforcement officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if, after reading such instrument, the law enforcement officer refuses to sign it. Should a police employee or law enforcement officer refuse to sign, that fact shall be noted on that document and signed or initialed by such officer.
- B. A police employee or law enforcement officer shall have thirty days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to and will accompany the adverse comment.
- C. A police employee or law enforcement officer, upon written request, shall have any record of a formal complaint made against the officer for any violation of a municipal or parish ordinance or state criminal statute listed in Paragraph (2) of this Subsection involving domestic violence expunged from his personnel file, if the complaint was made anonymously to the police department and the charges are not substantiated within twelve (12) months of the lodging of the complaint.
 - 1. Any violation of a municipal or parish ordinance or state statute defining criminal battery and assault.
 - 2. Any violation of other municipal or parish ordinances or state statutes; including criminal trespass, criminal damage to property, or disturbing the peace, if the incident occurred at either the home of the victim or the officer or the violation was the result of an obvious domestic dispute.

IV. 40:2534. Disclosure of finances

No law enforcement officer shall be required to disclose, for the purpose of promotion or assignment, any item of his property, income, assets, debts or expenditures or those of any member of such officer's household.

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V. 40:2535. Retaliation for exercising rights

There shall be neither penalty nor threat of any penalty for the exercise by a police employee or law enforcement officer of his rights under this Chapter.