

# By The Book: Compliance With The Officers' Bill Of Rights

*A Practical Checklist For Law Enforcement Agencies On Handling Internal Investigations*



The 2021 Officers' Bill of Rights, §590.502, RSMo., sets out new requirements that a Missouri law enforcement agency must follow when investigating an officer's conduct. This involved procedure is very different from how cities investigate the conduct of other employees, who typically can be fired for any non-discriminatory reason or even for no reason. Under this statute, Missouri law enforcement officers are no longer at-will employees (an agency's highest-ranking officer is not covered by this law; employment of police chiefs is addressed by §84.490,

RSMo.). Any administrative review, employee discipline, or termination of employment must now adhere to a robust set of procedural due process protections. Accordingly, it is now no longer permissible to immediately terminate an officer "on the spot" without first conducting an administrative investigation. Instead, the agency must satisfy the statute's list of procedural steps. Those steps can be best understood by grouping the various notice requirements and deadlines into stages or phases, as discussed in this article.

## Complaint Stage

The process begins when the agency receives a complaint, either from outside or inside the department, which must be in the form of a written statement. If the agency decides to act on that complaint and launch an internal, administrative investigation, the officer being investigated is entitled to a copy of the written statement, as is the officer's attorney. They are also entitled to be informed in writing of the nature of the allegation that should include citation to the particular policy alleged to have been

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violated. While not strictly required, it is advisable for an agency to develop standardized forms and checklists for this process. These documents, and any other records or recordings of the investigation or hearing, are strictly confidential and not subject to disclosure under the Sunshine Law, although these materials can be released pursuant to a court order or subpoena.

From the time the complaint is received, the agency must complete the investigation within 90 calendar days. The statute allows up to two 60-day extensions as approved by a group authorized to make determinations of appeals of disciplinary action, such as a personnel board, which smaller departments may not have. An unlimited number of extensions can be granted while awaiting the conclusion of any criminal investigation into the officer's conduct, which is a separate inquiry from the administrative one. The officer under review is entitled to argue against granting any of these extensions.

## Interview Stage

If the agency elects to interview the officer, that officer must be given advance notice at least 24 hours before any questioning. The interview must take place during the officer's normal shift at a secure location, such as the police station. The notice must also provide the name, rank, and command of the one or two officers conducting the administrative interview, who cannot be involved with any criminal investigations into the officer's conduct. The interview, which can be recorded, must not last for an unreasonably long period of time but shall include breaks or rest periods as needed by the officer. The officer is entitled to have an attorney present during the interview and has the right to confer with counsel at any time, but the lawyer may not interrupt the questioning. At the beginning of the interview, the officer is again entitled to a copy of the complaint and must be advised that the officer

has been ordered to answer questions under threat of disciplinary action or termination, but that those statements cannot be used to criminally prosecute the officer. While not required, the agency should have the officer sign a form to prove that this disclaimer was given and understood, not unlike the procedure for an interrogation Miranda waiver, although in this context, it is called a Garrity warning. Other than the inherent threat of being fired for failure to cooperate, the officer may not be harassed during the interview, nor can any kind of reward be promised to the officer.

## Report Stage

Once the administrative investigation is complete, the investigator(s) must inform the officer in writing of any findings, any recommendations, and/or any discipline within five days. Upon written request, the officer is to be given a copy of the entire file,

including any statements or recordings, within five days. This request can also be made by the officer's attorney. The officer can provide a written response to any adverse material contained in the file. Such responses become part of the file itself and must be kept with the adverse material in question. If the investigation determines that the officer did not commit misconduct, the officer is entitled to compensation for any economic loss incurred during the investigation. On the other hand, if the officer is found to have violated policy and is suspended without pay, demoted, terminated, transferred, or otherwise forced to suffer an economic loss, the officer is then entitled to a due process hearing about that discipline.

### Hearing Stage

The statute does not provide a detailed procedure for conducting a due process hearing, which is a formal proceeding. The statute requires that the officer be given seven days' notice of any hearing, that the officer is entitled to a complete copy of the file, and that the officer may be represented at the hearing by an attorney. The officer has a right to remain silent during the hearing if criminal charges have been filed over the alleged misconduct or incident. If an officer facing criminal charges elects to remain silent at the hearing, that decision cannot result in additional criminal charges or employment discipline. The final decision following the hearing must set out in writing a finding of facts and contain a concise statement about each issue presented during the hearing. A copy of that final decision must be provided to the officer or the officer's lawyer and set out the procedure for an appeal if the agency has such a process.

### Litigation Stage

If the officer is sued for the alleged misconduct under investigation, the agency is required to provide legal defense and to pay any judgments or settlements on behalf of the officer. This duty does not apply if the officer is convicted of a crime arising out of the misconduct, in which case the officer is personally liable. An officer may file a lawsuit against the agency for failure to



satisfy the requirements of the statute within one year from the date the failure was first discovered. If a court finds that the agency did not properly comply with the requirements, the resulting action, such as termination, can be reversed and the officer reinstated. An agency can also be ordered to reimburse the officer the cost of bringing the lawsuit.

### Conclusion

The key to compliance with the Officer Bill of Rights is to update policies and procedures to reflect these new rules.

Every city with a police department should make such updates a priority and remain attentive to any developments. As of Aug. 1, 2022, there are no reported Missouri court decisions addressing this statute, but formal opinions will surely be forthcoming. Indeed, a lawsuit challenging the constitutionality of the statute has been filed and is awaiting disposition, but at present, the plain language of the statute is the only available guide to law enforcement agencies. That language makes plain that terminating the employment of a law enforcement officer must be carefully handled by the book. 🍃

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