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## STATE AND LOCAL LAW ENFORCEMENT DISCIPLINE, ACCOUNTABILITY AND DUE PROCESS ACT *“LAW ENFORCEMENT OFFICER BILL OF RIGHTS”*

### **BACKGROUND**

Throughout the country, many states lack coherent guidelines and procedures for law enforcement departments to follow to protect law enforcement officers' due process rights. Sworn law enforcement officers are held to an extremely high standard of personal and professional conduct, due to the enormous responsibilities they exercise. However, many officers are denied the same basic due process rights that all other citizens enjoy. In approximately fifty percent of the states, officers enjoy some legal protections against false accusations and abusive conduct. However, this leaves hundreds of thousands of officers who have limited or no due process and who face limitations or retaliation when exercising those and other rights.

In addition, sometimes individuals, including other officers, are reluctant to file a complaint against an officer, perceiving correctly or incorrectly that management will not take the complaint seriously and conduct an inquiry. Often departments lack any guidelines and procedures for handling and investigating complaints, thus raising doubts about officer accountability.

**If enacted into law, the “Law Enforcement Officer Bill of Rights” would provide officers with the following:**

- Officers would have the right to engage in civic activity and would not be prohibited from running for elective office because of their profession.
- Departments would have to establish effective procedures for receipt, review, and investigation of law enforcement and other complaints against law enforcement officers.
- If disciplinary action is foreseeable, officers would be notified of the investigation, the nature of the alleged violation, the eventual outcome of the inquiry, and the recommendations made to superiors by the investigators.
- Questioning of a law enforcement officer would be conducted at reasonable times, preferably while the officer is on duty, unless exigent circumstances apply.
- Questioning of the law enforcement officer would take place at the offices of those conducting the investigation or at the place where the officer reports to work, unless the officer consents to another location.
- A single investigator would question officers, and the officer would be informed of the name, rank, and command of the officer conducting the investigation.
- Officers could not be threatened, harassed, or promised rewards to induce the answering of any question.
- Officers under investigation would be entitled to have legal counsel or any other individual of their choice present at the questioning.
- Officers would be entitled to a hearing, notification in advance of the date of the hearing, and access to transcripts and other relevant documents and evidence generated by the hearing. The officer would also be entitled to be represented by legal counsel or another representative at the hearing.
- Officers could obtain declaratory or injunctive relief in state or federal court for violations of this law, including retaliation for the exercise of these or any other rights under federal, state, or local law.
- Officers would have the opportunity to comment in writing on any adverse materials placed in his or her personnel file.

- There would be five 'just cause' factors to be considered by the hearing officer or board for an officer to be found guilty or liable for disciplinary action; and mitigating factors are noted, which could reduce the severity of the disciplinary action.
- This law would only preempt those provisions in state, county, or municipal laws, which provide lesser officer protection, but would not preempt those providing equal or greater protection.

### **RECENT LEGISLATIVE HISTORY**

#### **110<sup>th</sup> Congress (2007-2009)**

- H.R. 688, the “State and Local Law Enforcement Discipline, Accountability and Due Process Act.” Introduced by Jim Ramstad (R-MN) on January 24, 2007. As of 1/3/2008, H.R. 688 was with the House Judiciary Committee and had the support of 35 co-sponsors.
- S. 449, Senate companion bill to H.R. 688. Introduced by Joseph R. Biden, Jr. (D-DE) on January 31, 2007. As of 1/3/2008, S. 449 was with the Senate Judiciary Committee and had the support of 5 co-sponsors.

#### **109<sup>th</sup> Congress (2005-2007)**

- H.R. 354, the “State and Local Law Enforcement Discipline, Accountability and Due Process Act.” Introduced by Jim Ramstad (R-MN). On 1/25/2005, H.R. 354 was referred to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security. No further action was taken on the bill. It had the support of 53 co-sponsors.
- S. 718, Senate companion bill to H.R. 354. Introduced by Joseph R. Biden, Jr. (D-DE). On 4/6/2005, S. 718 was referred to the Senate Judiciary Committee. No further action was taken on the bill. It had the support of 11 co-sponsors.

#### **108<sup>th</sup> Congress (2003-2005)**

- S. 1277, the “State and Local Law Enforcement Discipline, Accountability and Due Process Act.” Introduced by Joseph R. Biden, Jr. (D-DE) and Lindsey Graham (R-SC). On 6/18/2003, S. 1277 was referred to the Senate Judiciary Committee. No further action was taken on the bill. It had the support of 9 co-sponsors.
- H.R. 2967, House companion bill to S. 1277. Introduced by Jim Ramstad (R-MN). On 7/25/2007, H.R. 2967 was referred to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security. No further action was taken on the bill. It had the support of 35 co-sponsors.

*For information on the legislative history of this issue prior to the 108<sup>th</sup> Congress please contact the NAPO office at (800) 322-NAPO (6276).*

### **NAPO'S POSITION**

NAPO recognizes a serious need for the implementation of standards and procedures to guide both state and local law enforcement agencies and law enforcement officers during internal investigations, administrative hearings, and evaluation of citizen complaints. Too often law enforcement officers are subjected to the whim of their departments or local politics during internal investigations and administrative hearings. NAPO also supports the implementation of standards to guide law enforcement agencies in developing and operating a fair and effective investigative process. Individuals should have the right to file a complaint, to have the complaint investigated, and to be informed of its final disposition, including learning the outcome of the investigation and any resulting disciplinary action.

Consequently, NAPO has actively fought for the enactment of this legislation since 1990. In consultation with attorneys representing law enforcement officers, NAPO has worked tirelessly with Congress and other national interest groups to support this legislation.