

SENATE BILL No. 131

By Committee on Federal and State Affairs

2-2

1 AN ACT concerning law enforcement and corrections officers;
2 establishing certain rights.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) All law enforcement officers and correctional officers
6 employed by or appointed to a law enforcement agency or a correctional
7 agency shall have the following rights and privileges. Whenever a law
8 enforcement officer or correctional officer is under investigation and
9 subject to interrogation by members of the officer's agency for any reason
10 that could lead to disciplinary action, suspension, demotion, or dismissal,
11 the interrogation must be conducted under the following conditions:

12 (1) The interrogation shall be conducted at a reasonable hour,
13 preferably at a time when the law enforcement officer or correctional
14 officer is on duty, unless the seriousness of the investigation is of such a
15 degree that immediate action is required.

16 (2) The interrogation shall take place either at the office of the
17 command of the investigating officer or at the office of the local precinct,
18 police unit, or correctional unit in which the incident allegedly occurred, as
19 designated by the investigating officer or agency.

20 (3) The law enforcement officer or correctional officer under
21 investigation shall be informed of the rank, name and command of the
22 officer in charge of the investigation, the interrogating officer, and all
23 persons present during the interrogation. All questions directed to the
24 officer under interrogation shall be asked by or through one interrogator
25 during any one investigative interrogation, unless specifically waived by
26 the officer under investigation.

27 (4) The law enforcement officer or correctional officer under
28 investigation must be informed of the nature of the investigation before
29 any interrogation begins, and the officer must be informed of the names of
30 all complainants. All identifiable witnesses shall be interviewed, whenever
31 possible, prior to the beginning of the investigative interview of the
32 accused officer. The complaint, all witness statements, including all other
33 existing subject officer statements, and all other existing evidence,
34 including, but not limited to, incident reports, GPS locator information,
35 and audio or video recordings relating to the incident under investigation,
36 must be provided to each officer who is the subject of the complaint before

1 the beginning of any investigative interview of that officer. An officer,
2 after being informed of the right to review witness statements, may
3 voluntarily waive the provisions of this paragraph and provide a voluntary
4 statement at any time.

5 (5) Interrogating sessions shall be for reasonable periods and shall be
6 timed to allow for such personal necessities and rest periods as are
7 reasonably necessary.

8 (6) The law enforcement officer or correctional officer under
9 interrogation may not be subjected to offensive language or be threatened
10 with transfer, dismissal, or disciplinary action. A promise or reward may
11 not be made as an inducement to answer any questions.

12 (7) The formal interrogation of a law enforcement officer or
13 correctional officer, including all recess periods, must be recorded on
14 audio tape, or otherwise preserved in such a manner as to allow a
15 transcript to be prepared, and there shall be no unrecorded questions or
16 statements. Upon the request of the interrogated officer, a copy of any
17 recording of the interrogation session must be made available to the
18 interrogated officer no later than 72 hours, excluding holidays and
19 weekends, following the interrogation.

20 (8) If the law enforcement officer or correctional officer under
21 interrogation is under arrest, or is likely to be placed under arrest as a
22 result of the interrogation, the officer shall be completely informed of all
23 of the officer's rights before commencing the interrogation.

24 (9) At the request of any law enforcement officer or correctional
25 officer under investigation, the officer has the right to be represented by
26 counsel or any other representative of the officer's choice, who shall be
27 present at all times during the interrogation whenever the interrogation
28 relates to the officer's continued fitness for law enforcement or
29 correctional service.

30 (10) Notwithstanding the rights and privileges provided by this
31 subsection, this subsection does not limit the right of an agency to
32 discipline or to pursue criminal charges against an officer.

33 (b) A complaint review board shall be composed of three members:
34 One member shall be selected by the chief administrator of the agency or
35 unit; one member shall be selected by the aggrieved officer; and a third
36 member to be selected by the other two members. Agencies or units having
37 more than 100 law enforcement officers or correctional officers shall
38 utilize a five-member board, with two members being selected by the
39 administrator, two members being selected by the aggrieved officer, and
40 the fifth member being selected by the other four members. The board
41 members shall be law enforcement officers or correctional officers
42 selected from any state, county, or municipal law enforcement or
43 corrections agency within the county. There shall be a board for law

1 enforcement officers and a board for correctional officers whose members
2 shall be from the same discipline as the aggrieved officer. The provisions
3 of this subsection shall not apply to sheriffs or undersheriffs.

4 (c) Every law enforcement officer or correctional officer shall have
5 the right to bring civil suit against any person, group of persons, or
6 organization or corporation, or the head of such organization or
7 corporation, for damages, either pecuniary or otherwise, suffered during
8 the performance of the officer's official duties, for abridgment of the
9 officer's civil rights arising out of the officer's performance of official
10 duties, or for filing a complaint against the officer which the person knew
11 was false when it was filed. This section does not establish a separate civil
12 action against the officer's employing law enforcement agency for the
13 investigation and processing of a complaint filed under this section.

14 (d) A dismissal, demotion, transfer, reassignment or other personnel
15 action that might result in the loss of pay or benefits or that might
16 otherwise be considered a punitive measure may not be taken against any
17 law enforcement officer or correctional officer unless the law enforcement
18 officer or correctional officer is notified of the action and the reason or
19 reasons for the action before the effective date of the action.

20 (e) Whenever a law enforcement officer or correctional officer is
21 subject to disciplinary action consisting of suspension with loss of pay,
22 demotion, or dismissal, the officer or the officer's representative shall,
23 upon request, be provided with a complete copy of the investigative file,
24 including the final investigative report and all evidence, and with the
25 opportunity to address the findings in the report with the employing law
26 enforcement agency before imposing disciplinary action consisting of
27 suspension with loss of pay, demotion or dismissal. The contents of the
28 complaint and investigation shall remain confidential until such time as the
29 employing law enforcement agency makes a final determination of
30 whether or not to issue a notice of disciplinary action consisting of
31 suspension with loss of pay, demotion or dismissal. This subsection does
32 not provide law enforcement officers with a property interest or
33 expectancy of continued employment, employment or appointment as a
34 law enforcement officer.

35 (f) No law enforcement officer or correctional officer shall be
36 discharged, disciplined, demoted, denied promotion, transfer or
37 reassignment, or otherwise discriminated against in regard to such officer's
38 employment or appointment, or be threatened with any such treatment, by
39 reason of the officer's exercise of the rights granted by this section.

40 (g) Except as provided in this subsection, disciplinary action,
41 suspension, demotion or dismissal may not be undertaken by an agency
42 against a law enforcement officer or correctional officer for any act,
43 omission or other allegation of misconduct if the investigation of the

1 allegation is not completed within 180 days after the date the agency
2 received notice of the allegation by a person authorized by the agency to
3 initiate an investigation of the misconduct. If the agency determines that
4 disciplinary action is appropriate, it shall complete its investigation and
5 give notice in writing to the law enforcement officer or correctional officer
6 of its intent to proceed with disciplinary action, along with a proposal of
7 the specific action sought, including length of suspension, if applicable.
8 Notice to the officer must be provided within 180 days after the date the
9 agency received notice of the alleged misconduct, except as follows:

10 (1) The running of the limitations period may be tolled for a period
11 specified in a written waiver of the limitation by the law enforcement
12 officer or correctional officer.

13 (2) The running of the limitations period shall be tolled during the
14 time that any criminal investigation or prosecution is pending in
15 connection with the act, omission or other allegation of misconduct.

16 (3) If the investigation involves an officer who is incapacitated or
17 otherwise unavailable, the running of the limitations period shall be tolled
18 during the period of incapacitation or unavailability.

19 (4) In a multijurisdictional investigation, the limitations period may
20 be extended for a period of time reasonably necessary to facilitate the
21 coordination of the agencies involved.

22 (5) The running of the limitations period may be tolled for
23 emergencies or natural disasters during the time period wherein the
24 governor has declared a state of emergency within the jurisdictional
25 boundaries of the concerned agency.

26 (6) The running of the limitations period shall be tolled during the
27 time that the officer's compliance hearing proceeding is continuing,
28 beginning with the filing of the notice of violation and a request for a
29 hearing and ending with the written determination of the compliance
30 review panel or upon the violation being remedied by the agency.

31 (h) An investigation against a law enforcement officer or correctional
32 officer may be reopened, notwithstanding the limitations period for
33 commencing disciplinary action, demotion or dismissal, if:

34 (1) Significant new evidence has been discovered that is likely to
35 affect the outcome of the investigation.

36 (2) The evidence could not have reasonably been discovered in the
37 normal course of investigation or the evidence resulted from the
38 predisciplinary response of the officer.

39 Any disciplinary action resulting from an investigation that is reopened
40 pursuant to this subsection must be completed within 90 days after the date
41 the investigation is reopened.

42 (i) This act shall not apply to any law enforcement agency or
43 correctional agency:

- 1 (1) When officer's are represented by a union;
 - 2 (2) which has a board of review composed of at least three members,
 - 3 one of which is not employed by the law enforcement or corrections
 - 4 agency;
 - 5 (3) which has an internal affairs department that answers to elected
 - 6 officials; or
 - 7 (4) when the disciplinary meeting or verbal corrective action will not
 - 8 result in loss of rank, suspension or termination.
- 9 Sec. 2. This act shall take effect and be in force from and after its
- 10 publication in the statute book.