

Police Officer Bill Of Rights

Constitutionality

The Officer's Bill of Rights does not violate the constitutional doctrine of separation of powers by legislatively delegating an executive function to an administrative body since the legislature has the power to control the police and to vest administrative bodies or officers with some portion of that legislative power where the delegation is accompanied by standards sufficient to guide the exercise of the power delegated.

Purpose of Chapter

- (a) It is recognized that the safety of the citizens of Nashville depends on the level of trust between them and the Officers of the Metropolitan Police Department in the performance of their duties. The performance of those duties includes all manner of contacts and relationships with the public. The City of Nashville, the Metropolitan Police Department, and the Fraternal Order of Police recognize and appreciate the obligation and responsibility of maintaining the public trust in the Metropolitan Police Department and its employees.

- (b) Investigations, interviews and interrogations by the Metropolitan Police Department are to be conducted in a manner conducive to public confidence, good order and discipline that observe and protect the individual rights of each Officer of the Metropolitan Police Department.

The purpose of this chapter is to protect police officers from any impairment of their rights when their conduct is questioned.

Requirements for Interviews and Interrogations

(a) Except as otherwise provided in this subsection, the Metropolitan Police Department shall, not later than 48 hours before any interrogation or interview is held relating to an investigation conducted pursuant to this agreement, provide written notice to the accused Officer. An Officer may waive the notice required pursuant to this section.

(b) This notice shall include the following

1. The date, time and place of the interrogation or hearing;
2. A description of the nature of the investigation;
3. The officer will be informed of the rule(s) violated and the corresponding specifications of misconduct, to include date, time, location and manner in which the rule was violated, or that the Officer is to be interviewed as a witness only;
4. The name, rank and command of the Officer in charge of the investigation, the interrogating officer and persons to be present during the interrogation;
5. A statement of the Police Officers rights to representation and rights during the interrogation.

If new allegations of the rule(s) violated and/or the corresponding specifications are thereafter made, a new Request for Complaint Review Panel Hearing/Waiver of Complaint Review Panel Hearing and Waiver of Police Board Review shall be given to the officer at least fifteen (15) days prior to the date of said hearing.

(c) All interrogations and interviews shall be conducted during the accused Officer's regular duty hours whenever practical, or compensate the Officer for that time standard with current payroll practices.

(d) Immediately prior to the interrogation or interview, the investigator shall orally inform the accused Officer that;

1. The accused Officer is required to provide a statement and answer questions regarding the alleged misconduct in a truthful manner.

2. Failure or refusal to provide a statement or answer to questions will subject the accused Officer to disciplinary action that may include discharge or removal from office.

3. The accused Officer may be subject to disciplinary action for knowingly giving false statements.

(e) Prior to an interrogation, the Officer under investigation shall be informed of the identity of the person in charge of the investigation, the interrogation officer and the identity of all persons present during the interrogation. When a formal statement is being taken, all questions directed to the officer under interrogation shall be asked by and through one (1) interrogator.

(f) Immediately prior to the interrogation of an officer under investigation, he or she shall be informed in writing of the nature of the complaint and the names of all complainants.

(g) An Officer under investigation will be provided with a copy of any statement he/she has made within twenty-four (24) hours of the time the statement was made.

(h) Allow the accused Officer to explain an answer or refute a negative implication which results from questioning during an interrogation or interview.

- (i) All interviews and interrogations shall be limited in scope as to the specific alleged misconduct of the accused Officer.
- (j) All interviews and interrogations shall be for reasonable periods. Officers shall allowed time for personal necessities and rest periods as are reasonably necessary.
- (k) No Officer under interview or interrogation shall be threatened with transfer, dismissal or disciplinary action.
- (l) No Officer shall be subjugated to any offensive language, coercion or promise of reward as an inducement during an interview or interrogation.
- (m) Upon notification of an interview or interrogation, an officer shall have the right to be represented by legal counsel and/or Representative who may be present at all times during the interview or interrogation. The Representative shall not be a person subject to the same investigation. The Representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from an officer under interview or interrogation for non-criminal matters.
- (n) If prior to or during the interview or interrogation of an accused officer it is deemed that the officer may be charged with a criminal offense, that officer shall be immediately informed of his or her Constitutional Rights.
- (o) An accused Officer shall not be required to sign any document admitting guilt until a final disciplinary resolution is agreed to by the Chief of Police or his Designee. Once the accused Officer signs the disciplinary resolution agreement, the imposed discipline may not be changed.

Investigative Requirements

- (a) Investigations of complaints, non-criminal misconduct and minor infractions of departmental or civil service policies shall be completed within 45 days of notification to the accused Officer that they have become the subject of an internal investigation.

- (b) Only when there exists extenuating circumstances beyond the control of the investigator, may an investigation may continue past the 45 days. Written notification shall be given to the officer or officer representative and signed by the Chief of Police stating the just cause for the delay and how the delay can be remedied. Extensions may only be approved for 90 days after which time the investigation shall be concluded or an additional 90 day extension must be sought and granted under the terms of this section. Notwithstanding the tolling provisions below, in no case shall an investigation be extended beyond one (1) year from the date of the initial complaint. The timeframe of these investigations can be tolled in cases where
 - (1) The accused Officer is not readily available for the investigation to proceed.
 - (2) Any criminal investigation or prosecution is pending in connection with the act, omission, or other allegation of gross misconduct.
 - (3) The investigation involves an Officer who is incapacitated.
 - (4) The investigation involves more than one employee and requires a reasonable extension.

Failure to obtain an extension beyond the 45 days shall result in dismissal of the complaint against the Officer.

- (c) An investigation may be reopened against a Police Officer, notwithstanding the limitations period for commencing disciplinary action, demotion or dismissal, if:

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

(2) The evidence could not have reasonably been discovered in the normal course of investigation or the evidence resulted from the predisciplinary response of the Officer

Any disciplinary action resulting from an investigation that is reopened pursuant to this paragraph must be completed within 45 days after the date the investigation is reopened.

(d) Any action taken from the basis of a complaint and the formal investigation shall be rendered within 45 days of the original complaint or it will be considered waived and no action shall be taken.

(e) No member of the Metropolitan Police Department shall enter any adverse material into any file of an Officer unless that Officer has an opportunity to review and receive a copy of the material in writing, unless the Officer waives these rights in writing, except that such entry may be made if after reading such adverse material the Officer refuses to sign it. Should an Officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such Officer.

(f) An Officer shall have 30 days within to file a written response to any adverse comment or material entered in said Officers personnel file. Such written response shall be attached to, and shall accompany, the adverse comment or material.

(g) The provisions of this section shall not apply to any investigation which concerns allegations of corruption, brutality, major breach of civil rights, workers compensation fraud, criminal activities or that would jeopardize any other covert investigation.

Lie Detector Tests

(a) No sworn officer of the Metropolitan Police Department shall be compelled to submit to a lie detector test against his or her will. No disciplinary action or other recrimination shall be taken against a Metropolitan Police Officer refusing to submit to a lie detector test, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the Metropolitan Police Officer refused to take, or did not take, a lie detector test, nor shall any testimony or evidence be admissible at a subsequent departmental hearing, or proceeding, administrative or judicial, to the effect that the Metropolitan Police Officer refused to take, or was subjected to, a lie detector test.

(b) A person who makes an allegation against a Metropolitan Police Officer pursuant to Metropolitan Charter or Code may not be required to submit to a lie detector test as a condition to the investigation of the allegation, but may request or agree to be given a lie detector test. If such a person requests or agrees to be given a lie detector test, such test must be given.

(c) For the purpose of this section, "lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

Critical Incidents

When involved in a critical incident¹ an Officer shall be allowed a reasonable amount of time to confer with legal counsel or a Representative prior to producing any written or oral statement concerning the incident in which the Officer is involved.

¹ Critical incidents include, but are not limited to, shootings and/or the discharge of firearms, in-custody deaths, personal-injury vehicle accidents involving on-duty officers, and incidents where the use of force results in the treatment of injuries to the suspect at any healthcare facility.

Retaliation for Exercising Rights

No Officer shall be discharged; disciplined; demoted; denied promotion, transfer, or reassignment; or otherwise discriminated against in regard to said Officers employment or Employment, or be threatened with any such treatment, by reason of the Officers exercise of the rights granted by this document.

Administrative Charges

Disciplinary charges against an officer shall be identified by the investigating officer. Subsequent charges may be added only following a complete, subsequent investigation based on information not known to the primary investigator. Charges shall not be redundant.

Consistency in Charges, Recommendations, and Disciplinary Actions

Charges, Recommended Disciplinary Action, and Disciplinary Actions taken or imposed shall be consistent among officers for situations, facts, and disciplinary histories similarly situated.

Compulsion of Testimony

The Metropolitan Nashville Police Department shall not compel an Officer under investigation to speak or testify before, or to be questioned by any nongovernmental agency relating to any matter or issue under investigation.

Media Information Restrictions

Neither the identity of an Officer under investigation, nor his/her photograph, shall be made available to the media unless there has been a criminal conviction or a decision been rendered by a Disciplinary Board where no appeal is taken. However, if the Officer is found innocent, the Officer may request and the Department shall issue a public statement.

Remedies for Violations

- (a) If, upon appeal, the Civil Service Commission, administrative judge or hearing officer determines that evidence was obtained during an investigation of a Metropolitan Police Officer concerning conduct that could result in punitive action in a manner which violates any provisions this chapter, and that such evidence may be prejudicial to the peace officer, such evidence is inadmissible and the Civil Service Commission, administrative judge, or hearing officer shall exclude such evidence during any administrative proceeding commenced or civil action filed by the officer.

- (b) It shall be unlawful for the Metropolitan Police Department to deny or refuse to any Officer the rights and protections guaranteed to them by this bill. The Chancery Court shall have jurisdiction over any proceeding brought by any Officer against the Metropolitan Police Department for alleged violations of this bill, the Court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the Metropolitan Police Department from taking any punitive action against the accused Officer.