

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1428

H. P. 1127

House of Representatives, March 24, 1975

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Jensen of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Providing for a Bill of Rights for Law Enforcement Officers.

Be it enacted by the People of the State of Maine, as follows:

30 MRSA c. 213, sub-c. III-B, is enacted to read:

SUBCHAPTER III-B

LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS

§ 2371. Definitions

As used in this subchapter, the following terms shall have the following meanings, unless the context otherwise indicates.

1. Hearing. "Hearing" means any meeting in the course of a formal investigatory proceeding, other than an interrogation, at which no testimony is taken under oath, conducted by an investigating committee for the purpose of taking or adducing testimony or receiving other evidence.

2. Investigating committee. "Investigating committee" means a committee from within a law enforcement agency which is authorized to hold a hearing on a complaint against a law enforcement officer and which consists of not less than 3 members who have had no part in the investigation or interrogation of the law enforcement officer.

3. Law enforcement officer. "Law enforcement officer" means any person who, in his official capacity, is authorized by law to make arrests and who is a member of one of the following law enforcement agencies:

A. The police department, bureau or force of any incorporated city or town; or

B. The office of the sheriff of any county.

§ 2372. Conditions of interrogation

Whenever a law enforcement officer is under investigation or subjected to interrogation by an investigating committee of a law enforcement agency for any reason which could lead to disciplinary action, demotion or dismissal, the investigation or interrogation shall be conducted under the following conditions:

1. Time of interrogation. The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer is on duty, unless the seriousness of the investigation is of such a degree that an immediate interrogation is required.

2. Place of interrogation. The interrogation shall take place either at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer, unless otherwise waived by the law enforcement officer.

3. Interrogation procedure. The law enforcement officer under investigation by the investigating committee shall be informed of the name, rank and command of the officer in charge of the investigation, the interrogating officer and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by and through one interrogator.

4. Sworn complaint. No complaint against a law enforcement officer, alleging improper activity in the execution of his duties, shall be investigated unless the complaint is filed with the officer in charge of the applicable law enforcement agency. If the officer in charge of that agency feels there may be reasonable cause for an investigation of one of the officers attached to that agency, he or his designee may cause an investigation to be held by issuing a written order specifying the allegations to be investigated.

5. Name of complainants and witnesses. The law enforcement officer under investigation by the investigating committee shall be informed in writing of the nature of the investigation prior to any interrogation and of the names of all complainants and witnesses.

6. Length of interrogation sessions. Interrogating sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.

7. Threats of transfer, dismissal or disciplinary action prohibited. The law enforcement officer under interrogation shall not be threatened with transfer, dismissal or disciplinary action.

8. Interrogation record. A complete record, either written, taped or transcribed, shall be kept of the complete interrogation of a law enforcement officer, including all recess periods. A copy of the record shall be available to the officer or his counsel upon request.

9. Procedure upon arrest. If the law enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the

interrogation, he shall be completely informed of all his rights prior to the commencement of the interrogation.

10. Right to counsel. At the request of any law enforcement officer under interrogation, he shall have the right to be represented by counsel or any other responsible representative of his choice who shall be present at all times during the interrogation, unless waived by the law enforcement officer. The interrogation shall be suspended for a reasonable time until representation can be obtained.

11. Abridgment of rights prohibited. No statute shall abridge nor shall any law enforcement agency adopt any regulation which prohibits the right of a law enforcement officer to bring suit arising out of his duties as a law enforcement officer.

12. Insertion of adverse materials into files. No law enforcement agency shall insert any adverse material into any file of the officer, except the active file of any investigating committee, unless the officer has an opportunity to review, sign, receive a copy of and comment in writing upon the adverse material, unless the officer waives these rights.

§ 2373. Disclosure

No law enforcement officer shall be required to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures; including those of any member of his family or household, unless such information is necessary in investigating a possible conflict with respect to the performance of his official duties.

§ 2374. Suspension with pay

Any officer who is the subject of a complaint filed with the officer in charge of his law enforcement agency may be suspended with pay from the performance of his official duties pending the outcome of an investigation under this chapter, if the officer in charge determines that continuance of the officer in his duties poses a potential danger to the public safety.

§ 2375. Hearing

1. Notice of right to hearing. If the investigation or interrogation of a law enforcement officer results in the recommendation of some action, such as demotion, dismissal, transfer, loss of pay, reassignment or similar action which would be considered a punitive measure, then, before taking such action, the law enforcement agency shall give notice to the law enforcement officer that he is entitled to a hearing on the issues by an investigating committee. The notice shall state the time and place of the hearing and the issues involved. An official record, including testimony and exhibits, shall be kept of the hearing.

2. Conduct of hearing. The hearing shall be conducted by the investigating committee of the law enforcement agency by which the law enforcement officer is employed. Both the law enforcement agency and the law enforcement officer shall be given ample opportunity to present evidence and argument with respect to the issues involved. Both may be represented by counsel.

3. Evidence of hearing. Evidence which possesses probative value commonly accepted by reasonable and prudent men in the conduct of their affairs shall be admissible and shall be given probative effect. The officer in charge of the investigating committee conducting the hearing shall give effect to the rules of privilege recognized by law and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. All records and documents which any party desires to use shall be offered and made a part of the record. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

4. Right of cross-examination and rebuttal. Any law enforcement officer who is the subject of an investigation under this chapter and any officer in charge of the investigating committee conducting that investigation shall have the right of cross-examination of the witnesses who testify and may submit rebuttal evidence.

5. Judicial notice by hearing officer. The investigating committee conducting the hearing may take notice of judicially cognizable facts and, in addition, may take notice of general, technical or scientific facts within its specialized knowledge. Parties shall be notified beforehand of the material so noticed.

§ 2376. Findings of fact

Any decision, order or action taken disciplining a law enforcement officer, which is the result of a hearing under this chapter, shall be in writing and shall be accompanied by findings of fact. The findings shall consist of a concise statement upon each issue in the case. A copy of the decision or order and accompanying findings and conclusions, along with written recommendations for action, shall be delivered or mailed promptly to the law enforcement officer or to his attorney or representative of record.

§ 2377. Appeal

Appeal from decisions rendered in accordance with sections 2375 and 2376 shall be taken to the municipal board of appeals, if the appeal is taken by a municipal police officer or to the board of county commissioners, if the appeal is taken by a sheriff or one of his deputies.

§ 2378. Retaliation prohibited

No law enforcement officer shall be discharged, disciplined, demoted or denied promotion, transfer or reassignment, or otherwise discriminated against in regard to his employment or be threatened with any such treatment by reason of his exercise of or demand for the rights granted in this subchapter.

§ 2379. Court remedy

Any law enforcement officer who is denied any right afforded by this subchapter may apply, either individually or through his certified or recognized employee organization, if any, to the Superior Court of the county in which he resides or is regularly employed for any order directing the law enforcement agency to show cause why the right should not be afforded.

STATEMENT OF FACT

The purpose of this Act is to provide for a Bill of Rights for Law Enforcement Officers.