WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1995

ENROLLED

SENATE BILL NO. 414

(By Senator Wooton, et al.)

PASSED March 11, 1995
In Effect 60 Days From Passage
An ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen-c, relating to deputy sheriffs; procedure for investigation; definitions; investigation or interrogation of a deputy sheriff; hearing; right to refuse to disclose personal finances; exceptions; and appeal.

Be it enacted by the Legislature of West Virginia:

That chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article fourteen-c, to read as follows:

ARTICLE 14C. DEPUTY SHERIFFS; PROCEDURE FOR INVESTIGATION.
§7-14C-1. Definitions.

1 Unless the context clearly indicates otherwise, as used in this article:

3 (1) “Deputy sheriff” means any person appointed by a sheriff as his or her deputy whose primary duties as
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deputy are within the scope of active, general law
enforcement and as such is authorized to carry deadly
weapons, patrol the highways, perform police functions,
make arrests or safeguard prisoners. This definition may
not be construed to include any person or persons whose
sole duties are the service of civil process and subpoenas
as provided in section fourteen, article one, chapter fifty
of this code, but the exclusion does not preclude the
service of civil process or subpoenas by deputy sheriffs
covered by the provisions of this code.

(2) "Under investigation" or "under interrogation"
means any situation in which any deputy sheriff becomes
the focus of inquiry regarding any matter which may
result in punitive action.

(3) "Punitive action" means any action which may lead
to dismissal, demotion, suspension, reduction in salary,
written reprimand or transfer for purposes of punish-
ment.

(4) "Hearing board" means a board which is authorized
by the sheriff to hold a hearing on a complaint against a
deputy sheriff and which consists of three members, all
to be selected from deputy sheriffs within that agency, or
law-enforcement officers or firefighters of another
agency with the approval of the sheriff and who have
had no part in the investigation or interrogation of the
deputy sheriff under investigation. One of the members
of the board shall be appointed by the sheriff, one shall
be appointed by the deputy sheriff's association and
these two members of the board shall, by mutual agree-
ment, appoint the third member of the board: Provided,
That if the first two members of the board fail to agree
upon the appointment of the third member of the board
within five days, they shall submit to the sheriff's civil
service commission a list of four qualified candidates
from which list the commission shall appoint the third
member of the board: Provided, however, That in the
event one or more members of the board cannot be
appointed as otherwise provided in this section, then the
chief judge of the circuit court of the county shall
appoint a sufficient number of citizens of the county as
may be necessary to constitute the board. At least one
member of the hearing board shall be of the same rank
as the deputy sheriff against whom the complaint has
been filed.

(5) "Hearing" means any meeting in the course of an
investigatory proceeding, other than an interrogation at
which no testimony is taken under oath, conducted by a
hearing board for the purpose of taking or inducing
testimony or receiving evidence.

§7-14C-2. Investigation and interrogation of a deputy sheriff.

When any deputy sheriff is under investigation and
subjected to interrogation by his or her commanding
officer, or any other member of the department, which
could lead to punitive action, the interrogation shall be
conducted under the following conditions:

(a) The interrogation shall be conducted at a reason­
able hour, preferably at a time when the deputy sheriff
is on duty, or during his or her normal working hours,
unless the seriousness of the investigation requires
otherwise. If the interrogation does occur during the off­
duty time of the deputy sheriff being interrogated at any
place other than his or her residence, the deputy sheriff
shall be compensated for that off-duty time in accor­
dance with regular department procedure. If the inter­
rogation of the deputy sheriff occurs during his or her
regular duty hours, the deputy sheriff may not be
released from employment for any work missed due to
interrogation.

(b) Any deputy sheriff under investigation shall be
informed of the nature of the investigation prior to any
interrogation. The deputy sheriff shall also be informed
of the name, rank and command of the officer in charge
of the interrogation, the interrogating officers and all
other persons to be present during the interrogation. No
more than three interrogators at one time may question
the deputy sheriff under investigation.

(c) No deputy sheriff under interrogation may be
subjected to offensive language or threatened with
punitive action. No promise of reward may be made as
an inducement to answering questions.

(d) The complete interrogation of any deputy sheriff
shall be recorded, whether written, taped or transcribed.
Upon request of the deputy sheriff under investigation or
his or her counsel, and upon advance payment of the
reasonable cost thereof, a copy of the record shall be
made available to the deputy sheriff not less than ten
days prior to any hearing.

(e) Upon the filing of a formal written statement of
charges or whenever an interrogation focuses on matters
which are likely to result in punitive action against any
deputy sheriff, then that deputy sheriff shall have the
right to be represented by counsel who may be present at
all times during the interrogation.

Nothing herein prohibits the immediate temporary
suspension from duty, pending an investigation, of any
deputy sheriff who reports for duty under the influence
of alcohol or a controlled substance which would prevent
the deputy from performing his or her duties as defined
in chapter sixty-a of this code, or under the influence of
an apparent mental or emotional disorder.

§7-14C-3. Hearing.

(a) If the investigation or interrogation of a deputy
sheriff results in the recommendation of some punitive
action, then, before taking punitive action the sheriff
shall give notice to the deputy sheriff that he or she is
entitled to a hearing on the issues by a hearing board.
The notice shall state the time and place of the hearing
and the issues involved and be delivered to the deputy
sheriff not less than ten days prior to the hearing. An
official record, including testimony and exhibits, shall be
kept of the hearing.
(b) The hearing shall be conducted by the hearing board of the deputy sheriff except that in the event the recommended punitive action is discharge, suspension or reduction in rank or pay, and the action has been taken, the hearing shall be pursuant to the provisions of section seventeen, article fourteen of this chapter, if applicable. Both the sheriff and the deputy sheriff shall be given ample opportunity to present evidence and argument with respect to the issues involved.

(c) With respect to the subject of any investigation or hearing conducted pursuant to this section, the hearing board may subpoena witnesses and administer oaths or affirmations and examine any individual under oath and may require and compel the production of records, books, papers, contracts and other documents.

(d) Any decision, order or action taken as a result of the hearing 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 deputy sheriff or to his or her attorney of record.

§7-14C-4. Right to refuse to disclose personal finances; exceptions.

For the purposes of job assignment or other personnel action, a sheriff may not require or request a deputy sheriff to disclose any item if his or her property, income, assets, sources of income, debts or personal or domestic expenditures unless such information is obtained through proper legal procedures or is necessary for the employing agency to ascertain the desirability of assigning the deputy sheriff to a specialized unit in which there is a strong possibility that bribes or other improper inducements might be offered.

§7-14C-5. Appeal.

Any deputy sheriff adversely affected by any decision,
order or action taken as a result of a hearing as herein
provided has the right to appeal the decision, order or
action to the deputy sheriff's civil service commission, in
the manner provided for in section fifteen, article
fourteen of this chapter.

The sheriff may also appeal the decision of the hearing
board if he or she believes the department would be
adversely affected by the order or action of the hearing
board.

The order or action of the hearing board is binding
upon all involved parties unless overturned in the appeal
process by the deputy sheriff's civil service commission
or the circuit court of the county wherein the affected
parties reside.
That Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.
In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within.......... approved this the 24th

day of.............., 1995.

Governor