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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

SENATE BILL NO. 414

(By Senator WOOSTON, ET AL)



PASSED MARCH 11, 1995

In Effect 90 Days From Passage

ENROLLED
Senate Bill No. 414

(BY SENATORS WOOTON, OLIVERIO, LOVE, YODER, BUCKALEW,
WIEDEBUSCH, WHITE, BAILEY, PLYMALE, WAGNER,
ANDERSON AND SHARPE)

[Passed March 11, 1995; in effect ninety 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
- 2 in this article:
- 3 (1) "Deputy sheriff" means any person appointed by a
- 4 sheriff as his or her deputy whose primary duties as

5 deputy are within the scope of active, general law
6 enforcement and as such is authorized to carry deadly
7 weapons, patrol the highways, perform police functions,
8 make arrests or safeguard prisoners. This definition may
9 not be construed to include any person or persons whose
10 sole duties are the service of civil process and subpoenas
11 as provided in section fourteen, article one, chapter fifty
12 of this code, but the exclusion does not preclude the
13 service of civil process or subpoenas by deputy sheriffs
14 covered by the provisions of this code.

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

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

23 (4) "Hearing board" means a board which is authorized
24 by the sheriff to hold a hearing on a complaint against a
25 deputy sheriff and which consists of three members, all
26 to be selected from deputy sheriffs within that agency, or
27 law-enforcement officers or firefighters of another
28 agency with the approval of the sheriff and who have
29 had no part in the investigation or interrogation of the
30 deputy sheriff under investigation. One of the members
31 of the board shall be appointed by the sheriff, one shall
32 be appointed by the deputy sheriff's association and
33 these two members of the board shall, by mutual agree-
34 ment, appoint the third member of the board: *Provided,*
35 That if the first two members of the board fail to agree
36 upon the appointment of the third member of the board
37 within five days, they shall submit to the sheriff's civil
38 service commission a list of four qualified candidates
39 from which list the commission shall appoint the third
40 member of the board: *Provided, however,* That in the
41 event one or more members of the board cannot be
42 appointed as otherwise provided in this section, then the

43 chief judge of the circuit court of the county shall
44 appoint a sufficient number of citizens of the county as
45 may be necessary to constitute the board. At least one
46 member of the hearing board shall be of the same rank
47 as the deputy sheriff against whom the complaint has
48 been filed.

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

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

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

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

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

26 the deputy sheriff under investigation.

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

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

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

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

§7-14C-3. Hearing.

1 (a) If the investigation or interrogation of a deputy
2 sheriff results in the recommendation of some punitive
3 action, then, before taking punitive action the sheriff
4 shall give notice to the deputy sheriff that he or she is
5 entitled to a hearing on the issues by a hearing board.
6 The notice shall state the time and place of the hearing
7 and the issues involved and be delivered to the deputy
8 sheriff not less than ten days prior to the hearing. An
9 official record, including testimony and exhibits, shall be
10 kept of the hearing.

11 (b) The hearing shall be conducted by the hearing
12 board of the deputy sheriff except that in the event the
13 recommended punitive action is discharge, suspension or
14 reduction in rank or pay, and the action has been taken,
15 the hearing shall be pursuant to the provisions of section
16 seventeen, article fourteen of this chapter, if applicable.
17 Both the sheriff and the deputy sheriff shall be given
18 ample opportunity to present evidence and argument
19 with respect to the issues involved.

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

26 (d) Any decision, order or action taken as a result of
27 the hearing shall be in writing and shall be accompanied
28 by findings of fact. The findings shall consist of a
29 concise statement upon each issue in the case. A copy of
30 the decision or order and accompanying findings and
31 conclusions, along with written recommendations for
32 action, shall be delivered or mailed promptly to the
33 deputy sheriff or to his or her attorney of record.

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

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

§7-14C-5. Appeal.

1 Any deputy sheriff adversely affected by any decision,

2 order or action taken as a result of a hearing as herein
3 provided has the right to appeal the decision, order or
4 action to the deputy sheriff's civil service commission, in
5 the manner provided for in section fifteen, article
6 fourteen of this chapter.

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

11 The order or action of the hearing board is binding
12 upon all involved parties unless overturned in the appeal
13 process by the deputy sheriff's civil service commission
14 or the circuit court of the county wherein the affected
15 parties reside.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within *is approved* this the *24th*
day of *May*, 1995.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/23/95

Time 3:51 pm