

RESOLUTION OF THE CITY COUNCIL

No. 351

EFFECTIVE ~~Approved~~ June 15, 1998

RESOLVED, That the City Council hereby endorses and urges passage by the General Assembly of House Bill 98-H 8226 relating to Law Enforcement Officers' Bill of Rights, in substantially the form attached.

IN CITY COUNCIL
JUN 4 1998
READ AND PASSED
Eruehyn V. Fargnoli
PRES.
Michael R. Clement
CLERK

A true copy,
Attest:
Michael R. Clement
Michael R. Clement
City Clerk

THE COMMITTEE ON

State Legislation

Recommends

Passage

Barbara A. Towner

Clerk

5/19/98

LC01758

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

98-H 8226

JANUARY SESSION, A.D. 1998

AN ACT

RELATING TO LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS

98-H 8226

Introduced By: Reps. Rabideau, Carter, Garvey, Carroll
and Iannitelli

Date Introduced: February 3, 1998

Referred To: Committee on Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-28.6-1, 42-28.6-4, and 42-28.6-5 of the General Laws in
2 Chapter 42-28.6 entitled "Law Enforcement Officers' Bill of Rights" are hereby amended to read
3 as follows:

4 42-28.6-1. Definitions -- Payment of legal fees. -- As used in this chapter, the following
5 words have the meanings indicated:

6 (A) "Law enforcement officer" shall mean any permanently employed city or town
7 police officer, state police officer, or permanent law enforcement officer of the department of
8 natural resources, or Rhode Island state marshall, however this shall not include the chief of
9 police and/or the highest ranking sworn officer of any of the departments.

10 (B) (1) "Hearing committee" means a committee which is authorized to hold a hearing
11 on a complaint against a law enforcement officer and which consists of three (3) persons, two
12 (2) of whom are active or retired law enforcement officers from within the state of Rhode Island,
13 other than chiefs of police, who have had no part in the investigation or interrogation of the law
14 enforcement officer. The one law enforcement member of the committee shall be composed of
15 three (3) members, one member selected by the chief or the highest ranking officer of the law
16 enforcement agency, one member selected by the aggrieved law enforcement officer and the
17 third member shall be a hearing officer employed by the director of the department of
18 administration or his or her designee, selected by the other two (2) members. In the event that

1 ~~the other two (2) members are unable to agree within five (5) days, then either member will~~
2 ~~make application to the presiding justice of the superior court and the presiding justice shall~~
3 ~~appoint the third member who shall be an active law enforcement officer~~ Upon written
4 application by a majority of the hearing committee, the presiding justice, in his or her discretion,
5 may also appoint legal counsel to assist the hearing committee.

6 (2) The law enforcement agency and the law enforcement officer under investigation
7 shall each be responsible to pay, fifty percent (50%) of the legal fee of the appointed legal
8 counsel for the hearing committee; provided, however, that on motion made by either party, the
9 presiding justice shall have the authority to make a different disposition as to what each party is
10 required to pay toward the appointed legal counsel's legal fee.

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

14 42-28.6-4. Right to hearing - Notice request for hearing - Selection of hearing
15 committee. - (a) If the investigation or interrogation of a law enforcement officer results in the
16 recommendation of some action, such as demotion, transfer, dismissal, loss of pay, reassignment,
17 or similar action which would be considered a punitive measure, then, before taking such action,
18 the law enforcement agency shall give notice to the law enforcement officer that he or she is
19 entitled to a hearing on the issues by a hearing committee. The law enforcement officer may be
20 relieved of duty subject to section 42-28.6-13 of this chapter, and shall receive all ordinary pay
21 and benefits as he or she would have if he or she were not charged.

22 Disciplinary action for violation(s) of departmental rules and/or regulations shall not be
23 instituted against a law enforcement officer under this chapter more than three (3) years after
24 such incident, except where such incident involves a potential criminal offense, in which case
25 disciplinary action under this chapter may be instituted at any time within the statutory period of
26 limitations for such offense.

27 (b) Notice under this section shall be in writing and shall inform the law enforcement
28 officer of the following:

29 (i) The nature of the charge(s) against him or her and, if known, the date(s) of the alleged
30 offense(s);

31 (ii) The recommended penalty;

32 (iii) The fact that he or she has five (5) days from receipt of the notice within which to

1 submit a written request for a hearing; and

2 (iv) The name and address of the officer to whom a written request for a hearing (and
3 other related written communications) should be addressed.

4 (c) The law enforcement officer shall, within five (5) days of his or her receipt of notice
5 given pursuant to subsection (b) herein, file a written request for hearing with the officer
6 designated in accordance with subsection (b)(iv). Failure to file a written request for a hearing
7 shall constitute a waiver of his or her right to a hearing under this chapter; provided, however,
8 that the presiding justice of the superior court, upon petition and for good cause shown, may
9 permit the filing of an untimely request for hearing.

10 (d) The law enforcement officer shall provide the charging law enforcement agency with
11 the name of one (1) active or retired law enforcement officer to serve on the hearing committee,
12 within five (5) days of the filing of his or her request for a hearing. Failure by the law
13 enforcement officer to file his or her filing committee selection within the time period shall
14 constitute a waiver of his or her right to a hearing under this chapter; provided, however, that the
15 presiding justice of the superior court, upon petition and for good cause shown, may permit the
16 filing of an untimely hearing committee selection by the officer. The charging law enforcement
17 agency may impose the recommended penalty during the pendency of any such petition.

18 (e) The charging law enforcement agency shall provide the law enforcement officer with
19 the name of one (1) active or retired law enforcement officer to serve on the hearing committee,
20 within five (5) days of its receipt of the officer's request for a hearing. Failure by the charging
21 law enforcement agency to file its hearing committee selection within that time period shall
22 constitute a dismissal of all charges against the law enforcement officer, with prejudice;
23 provided, however that the presiding justice of the superior court, upon petition and for good
24 cause shown, and permit the filing of an untimely hearing committee selection by the agency.
25 Except as expressly provided in section 42-28.6-13 of this chapter, no disciplinary action shall be
26 taken against the officer by virtue of the stated charges during the pendency of any such
27 petition.

28 (f) Within five (5) days of the charging law enforcement agency's selection of a hearing
29 committee member, Director of the Department of Administration or his or her designee shall
30 designate a state hearing officer as the third member of the committee who shall serve as chair of
31 the committee and shall preside at its hearings.

32 ~~(i) jointly select a third hearing committee member, who shall serve as chairman of the~~

1 hearing committee;

2 (ii) petition the presiding justice of the superior court to select a third hearing committee
3 member, who shall be an active law enforcement officer, and who shall serve as chairman of the
4 hearing committee; or

5 (iii) agree to an extension of time, not to exceed thirty (30) days, for the selection of a
6 third hearing committee member.

7 (g) Law enforcement officers selected to serve on a hearing committee under this chapter
8 shall be relieved of duty for each day of actual hearing and shall be compensated by their
9 respective agencies at their ordinary daily rate of pay for each day actually spent in the conduct
10 of the hearing hereunder. The law enforcement agency will reimburse the state for the per diem
11 cost of the hearing officer member of the hearing committee.

12 (h) ~~Two (2) lists of active police officers available to serve as chairmen of hearing~~
13 ~~committees under this chapter shall be provided annually to the presiding justice of the superior~~
14 ~~court. One (1) list shall be provided by the Rhode Island Police Chiefs' Association; the other~~
15 ~~shall be appointed jointly by the Fraternal Order of Police and the International Brotherhood of~~
16 ~~Police Officers. In selecting officers to serve as chairmen of hearing committees under this~~
17 ~~chapter, the presiding justice shall alternate between the two (2) lists so provided.~~

18 (i) Whenever a law enforcement officer faces disciplinary action as a result of criminal
19 charges, the provisions of subsection (c), (d), (e) and (f) shall be suspended pending the
20 adjudication of said criminal charges.

21 **42-28.6-5. Conduct of hearing.** (a) The hearing shall be conducted by the hearing
22 committee selected in accordance with section 42-28.6-4 of this chapter. Both the law
23 enforcement agency and the law enforcement officer shall be given ample opportunity to present
24 evidence and argument with respect to the issues involved. Both may be represented by counsel.

25 (b) The hearing shall be convened at the call of the chair; shall commence within thirty
26 (30) days after the designation selection of a ~~the hearing officer member~~ chairman of the hearing
27 committee; and shall be completed within sixty (60) days of the commencement of the hearing.
28 The hearing committee shall render a written decision within thirty (30) days after the conclusion
29 of the hearing. The time limits established in this subsection may be extended by the presiding
30 justice of the superior court for good cause shown.

31 (c) Not less than ten (10) days prior to the hearing date, the charging law enforcement
32 agency shall provide to the law enforcement officer:

1 (i) A list of all witnesses, known to the agency at that time, to be called by the agency to
2 testify at the hearing;

3 (ii) Copies of all written and/or recorded statements by such witnesses in the possession
4 of the agency; and

5 (iii) A list of all documents and other items to be offered as evidence at the hearing.

6 (d) Not less than five (5) days prior to the hearing date, the law enforcement officer shall
7 provide to the charging law enforcement agency a list of all witnesses, known to the officer at
8 that time, to be called by the officer to testify at the hearing.

9 (e) Failure by either party to comply with the provisions of subsections (c) and (d) of this
10 section shall result in the exclusion from the record of the hearing of testimony and/or evidence
11 not timely disclosed in accordance with those subsections.

12 SECTION 2. This act shall take effect upon passage.

LC01758

5

98-H 8226

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

AN ACT
RELATING TO LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS

...

- 1 This act amends the policemen's bill of rights with respect to the composition of the
- 2 hearing officer.
- 3 This act would take effect upon passage.

LC01758

TOWN OF BURRILLVILLE

105 Harrisville Main Street
Harrisville, Rhode Island
02830



TOWN BUILDING
HARRISVILLE, R.I.

TOWN CLERK'S OFFICE

Telephone 568-4300
Nancy M. Faford
Town Clerk

March 12, 1998

Ms. Evelyn V. Fagnoli
President
City Council
25 Dorrance Street
Providence RI 02903

Dear Ms. Fagnoli:

At the regular meeting of the Town Council held March 11, 1998 in the Council Chamber, Town Hall, at which time a quorum was present and acting throughout, the Town Council voted to adopt the enclosed resolution amending the Law Enforcement Officers' Bill of Rights.

The amendment addresses the composition of the Hearing Committee established by the Bill of Rights to hear disciplinary matters against police officers. Presently, the Hearing Committee comprises three active law enforcement officers, one chosen by the accused officer, one chosen by the municipality, and the third selected by agreement of the accused officer and the municipality.

The amendment calls for a change in how the third member of the Committee is selected. The proposal before the legislature, House Bill H-8226, calls for the third member to be a professional hearing officer provided by the State of Rhode Island. A change of this nature will greatly minimize the inherent discriminatory nature past Hearing Boards have shown toward municipalities.

This amendment has the support of the Police Chief's Association, the RI State Police and the RI League of Cities and Towns. The Town of Burrillville would greatly appreciate Providence's support and ask that you vote to support this Resolution and request the support of your legislators and local police officials.

Your active participation to get this amendment passed by the state legislature and signed by the Governor is critical to the effort. Please contact Burrillville's Town Manager, Michael Wood at 568-4300 if you have any questions or comments. And, please provide Mr. Wood with a copy of your vote supporting the resolution. We will be using this information to strengthen our position.

We thank you for your support on this issue.

Very truly yours,

Kevin P. Menard
President, Town Council

Enclosure

cc: Rhode Island Town and City Clerks

KPM: nla


TOWN COUNCIL
RESOLUTION

- Whereas, The Town of Burrillville, by its Town Council, has reviewed the proposed amendment to the Law Enforcement Officers' Bill of Rights identified as H-8226 which authorizes the reorganization of the disciplinary hearing committee to include a professional hearing officer as the third member, and
- Whereas, the existing law, as constituted, creates an inherent prejudice against law enforcement officials of the cities and towns entrusted to properly manage personnel in their municipal police departments, and
- Whereas, the citizens of the Town of Burrillville and State of Rhode Island may be deprived of accountability from their police departments resulting from the provisions of the existing law, and
- Whereas, amendment H-8226, as proposed, will help to balance the disciplinary hearing committee (panel) by providing, as its chairperson, a professional, non-affiliated third party who, working with the two (2) existing police representatives, will provide an equitable process to deliberate and decide on disciplinary matters of extreme importance to police officers (who may be the subject of disciplinary action) and the municipality who is trying to properly oversee its law enforcement (police) operations, and
- Whereas, this amendment will enhance the professionalism and integrity of the disciplinary hearing process which will, in turn, impart accountability, respect and credibility to honest, hard working police officers as well as to the supervising law enforcement officials, police chiefs, etc. throughout the state,

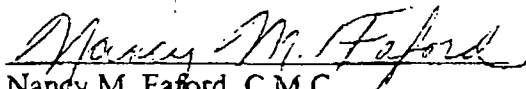
NOW THEREFORE BE IT RESOLVED, that we, Town Council of the Town of Burrillville, support this amendment (H-8226) and urge our legislative representatives to vote for its passage and, along with our town employees and officials, honor our commitment to this important legislation, and to support it throughout the process.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the City and Town Councils of the other thirty-eight cities and towns in the State of Rhode Island, along with a request that these bodies endorse this Resolution and request their legislators to support it.

Adopted this 11th day of March, 1998


Kevin P. Menard, Council President

ATTEST:


Nancy M. Faford, C.M.C.
Town Clerk

TOWN OF BURRILLVILLE

105 Harrisville Main Street
Harrisville, Rhode Island
02830 - 1499



Office of
Town Manager
Phone (401) 568-4300

April 6, 1998

Ms. Evelyn Fagnoli, President
Providence City Council
25 Dorrance Street
Providence RI 02903

Dear Ms. Fagnoli:

House Bill H-8226 (To amend the Law Enforcement Officers' Bill of Rights), was defeated on a tie vote of the House Judiciary Committee on April 2nd. This is unfortunate, but not unexpected. It appears that the statewide police union leaders have been able to influence a number of the members of the Judiciary Committee. Undoubtedly, this influence reaches deeply into the core constituency of both the House and the Senate.

Despite this setback, we cannot give up and we need to shore up our base of support by demanding a vote on this Amendment by the full House. We will also need to inform our Senators of our positions in order to ensure their support if we are successful.

To those Councils who have voted to support Burrillville's resolution - Thank you! If your Council has not yet voted on the resolution we mailed to you on March 12th, please do whatever you can to expedite a vote. We look forward to receiving letters of support from ALL the cities and towns in the state! We also encourage individual letters of support from members of your Council and Police Chief. We have a narrow window (maybe one (1) month) to complete our task.

Michael Wood, our Town Manager, will coordinate the follow-up activities directly, so please send a copy of your votes supporting the original resolution and any individual letters of support to his attention.

Together, we have a real chance to make a meaningful change for all our communities.

Very truly yours,

Kevin P. Menard
President, Burrillville Town Council

KPM: nla

Enclosures

A:\LETTERS\H-8226 APR03 letter.doc
6-Apr-98

The Town of Burrillville is an Equal Opportunity Employer

COUNCIL PRESIDENT
EVELYN V. FARGNOLI
24 LESLIE DRIVE
PROVIDENCE, RI 02908
Rec: 351-5110



City of Providence, Rhode Island

COMMITTEES
Finance
Board of
Park Commissioners
Board of Contract
and Supply
Providence Plan
Water Supply Board

December 11, 1997

Mr. Kevin P. Menard, President
Burrillville Town Council
105 Harrisville Main Street
Harrisville, Rhode Island 02830

Re: The "Law Enforcement Officers Bill of Rights"

Dear Town Council President Menard:

Thank you for your correspondence of December 3rd relative to the statewide initiative to make changes to the "Law Enforcement Officers Bill of Rights". It is my understanding that you are enlisting support from local legislative bodies to define those portions of the law that need to be changed or modified.

At this time, the Providence City Council is making plans to reconvene our Committee on Legislative Affairs, and I would be most happy to forward your request to them in the near future. In order for us to review your proposal, I would ask that you kindly forward a copy of this document and any suggested changes and/or amendments, so that our committee can review and discuss them.

Thank you for your consideration, and if you should need any further information, you may reach me at the Council office, at 521-7477. With my best regards, I remain

Sincerely,

Evelyn V. Fagnoli

Evelyn V. Fagnoli
Council President
Providence City Council

EVF/r

cc Town Manager, Michael Wood