

## SENATE BILL No. 79

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 36-8-2.2.

**Synopsis:** Rights of firefighters and police officers. Expands certain representation provisions to include police officers, along with firefighters. Repeals certain notice and representation provisions pertaining to firefighters and replaces these with provisions establishing minimum due process and personnel rights of a full-time, paid, nonprobationary member of a fire department or a police department relating to: (1) interrogation; (2) political activity; (3) disclosure of property and assets; (4) use of polygraph examinations and voice stress tests; and (5) personnel files.

**Effective:** July 1, 2019.

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January 3, 2019, read first time and referred to Committee on Local Government.

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First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

## SENATE BILL No. 79

A BILL FOR AN ACT to amend the Indiana Code concerning public safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 36-8-2.2-1, AS ADDED BY P.L.140-2017,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2019]: Sec. 1. ~~(a)~~ This chapter applies only to:  
4 (1) a firefighter who is a full-time, paid, nonprobationary member  
5 of a fire department; or  
6 (2) a police officer who is a full-time, paid, nonprobationary  
7 member of a police department.  
8 ~~(b) This chapter does not apply to any of the following:~~  
9 ~~(1) A member of the fire department who holds an upper level~~  
10 ~~policy making position.~~  
11 ~~(2) A member of the fire department who holds a position in the~~  
12 ~~fire department:~~  
13 ~~(A) that is not an upper level policy making position; and~~  
14 ~~(B) to which the member was appointed by the chief.~~  
15 ~~(3) A fire department having a merit system established under~~  
16 ~~IC 36-8-3.5.~~  
17 SECTION 2. IC 36-8-2.2-2 IS REPEALED [EFFECTIVE JULY 1,



1 2019]. Sec. 2: (a) This chapter does not apply to any interview;  
 2 interrogation; or other proceeding that is part of an investigation of  
 3 criminal charges against a firefighter.

4 (b) This chapter does not apply to any interview; interrogation; or  
 5 other interaction that is part of an investigation of a firefighter's  
 6 conduct.

7 SECTION 3. IC 36-8-2.2-3.5 IS ADDED TO THE INDIANA  
 8 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 9 [EFFECTIVE JULY 1, 2019]: Sec. 3.5. As used in this chapter,  
 10 "police department" means a police department established by a  
 11 county, city, town, or township.

12 SECTION 4. IC 36-8-2.2-4, AS ADDED BY P.L.140-2017,  
 13 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 14 JULY 1, 2019]: Sec. 4. A firefighter or police officer as described in  
 15 section 1 of this chapter has at least the rights set forth in this chapter.  
 16 in a meeting at which the chief of the fire department notifies the  
 17 firefighter of the firefighter's:

18 (1) termination; or

19 (2) demotion with cause.

20 SECTION 5. IC 36-8-2.2-5 IS REPEALED [EFFECTIVE JULY 1,  
 21 2019]. Sec. 5: (a) A firefighter has the right to be represented in any  
 22 meeting under section 4 of this chapter by either or both of the  
 23 following of the firefighter's own choosing and at the firefighter's own  
 24 expense:

25 (1) Legal counsel.

26 (2) A labor organization representative or other representative.

27 (b) Nothing in this chapter prohibits a firefighter from waiving the  
 28 firefighter's right of representation under this chapter.

29 SECTION 6. IC 36-8-2.2-5.5 IS ADDED TO THE INDIANA  
 30 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 31 [EFFECTIVE JULY 1, 2019]: Sec. 5.5. (a) For purposes of this  
 32 section, "public safety officer" means a police officer or firefighter  
 33 under investigation.

34 (b) When a public safety officer is subjected to interrogation by  
 35 the public safety officer's department, the following procedures  
 36 apply:

37 (1) The interrogation shall be conducted at a reasonable hour,  
 38 preferably at a time when the public safety officer is on duty,  
 39 unless, in the judgment of the interrogating officer, the  
 40 seriousness of the investigation requires an immediate  
 41 interrogation.

42 (2) The interrogation shall take place at the police department



1 or fire department or an equivalent office setting designated  
2 by the interrogating officer.

3 (3) The interrogating officer shall inform the public safety  
4 officer of the name, rank, and assignment of the officer in  
5 charge of the investigation, the interrogating officer, and all  
6 other persons present during the interrogation.

7 (c) The interrogating officer shall present the public safety  
8 officer with a statement of rights to be signed by the interrogating  
9 officer and the public safety officer. The statement of rights must  
10 be in substantially the following form:

11 STATEMENT OF RIGHTS

12 I wish to advise you that you are being questioned as part  
13 of an official investigation of the \_\_\_\_\_ Department. You  
14 will be asked questions specifically, directly, and narrowly  
15 related to the performance of your official duties as a  
16 \_\_\_\_\_ or concerning your fitness for service as a \_\_\_\_\_. You  
17 have the constitutional right not to incriminate yourself.

18 Under no circumstances will the results of this  
19 investigation or your statement be used in any subsequent  
20 criminal court action against you. However, factual  
21 information contained in the internal affairs file on this  
22 investigation, including your statement, is generally  
23 discoverable in civil rights litigation filed in federal or state  
24 court and may be used to impeach your testimony.

25 I further wish to advise you that if you refuse to give a  
26 statement or answer questions relating to the performance  
27 of your official duties or fitness for duty, you will be  
28 subjected to departmental charges that could result in your  
29 dismissal from the \_\_\_\_\_ Department.

30 Signed \_\_\_\_\_ (Interrogating officer).

31 I have read the above and understand it fully. I sign this  
32 statement having been advised of the above rights before  
33 any questions have been asked of me.

34 Signed \_\_\_\_\_ (Public safety officer).

35 Date and time \_\_\_\_\_.

36 (d) In a noncriminal case, once a public safety officer is  
37 scheduled for an interrogation described in subsection (b), the  
38 officer in charge of the investigation must provide the public safety  
39 officer with a copy of the complaint, if one exists. In a criminal  
40 case, the officer in charge of the investigation must inform the  
41 public safety officer of the nature of the complaint. The officer in  
42 charge is not required to disclose the name of the complainant to



- 1       **the public safety officer.**
- 2       **(e) An interrogation session shall be for a reasonable duration**
- 3       **of time and must allow for personal necessities and rest periods as**
- 4       **reasonably necessary.**
- 5       **(f) An interrogation of a public safety officer as described in**
- 6       **subsection (b) shall be tape recorded at the request of either party.**
- 7       **A written transcript must be provided to the public safety officer**
- 8       **upon request, at no cost to the public safety officer.**
- 9       **(g) If at the time of the interrogation the public safety officer is**
- 10       **under arrest or is likely to be placed under arrest, the**
- 11       **interrogating officer must completely inform the public safety**
- 12       **officer of the public safety officer's federal and state constitutional**
- 13       **rights regarding self-incrimination prior to the commencement of**
- 14       **the interrogation.**
- 15       **(h) A public safety officer may not be required to waive any**
- 16       **immunities under federal or state law at any point in an**
- 17       **investigation.**
- 18       **(i) A question posed to a public safety officer must specifically,**
- 19       **directly, and narrowly relate to the performance of duties or**
- 20       **fitness for service as a police officer or firefighter.**
- 21       **(j) A public safety officer shall have the right to be represented**
- 22       **by an attorney or other representative during an interrogation**
- 23       **where the interrogation relates to the public safety officer's**
- 24       **continued fitness for law enforcement or firefighting service. The**
- 25       **public safety officer shall be provided a reasonable period of time**
- 26       **to obtain representation, which may not exceed seventy-two (72)**
- 27       **hours from the time of request, unless agreed upon by both parties.**
- 28       **The attorney or representative may not participate in the**
- 29       **interrogation, except to advise the public safety officer.**
- 30       **(k) A public safety officer may be required to submit to a**
- 31       **polygraph examination or voice stress analysis test only under the**
- 32       **following circumstances:**
- 33               **(1) In a criminal or corruption investigation.**
- 34               **(2) As a condition of a personnel assignment to certain**
- 35               **sensitive positions.**
- 36       **The questions comprising a polygraph examination or voice stress**
- 37       **analysis test must specifically, directly, and narrowly relate to the**
- 38       **performance of official duties or continued fitness to serve. The**
- 39       **results of the tests described in this subsection may not be used in**
- 40       **a subsequent criminal case without the consent of the public safety**
- 41       **officer.**
- 42       **SECTION 7. IC 36-8-2.2-6 IS REPEALED [EFFECTIVE JULY 1,**



1 2019]. Sec. 6: (a) A meeting under section 4 of this chapter may not  
 2 proceed until the firefighter is provided at least seventy-two (72) hours  
 3 to obtain the representation requested by the firefighter.

4 (b) A firefighter may request representation during a meeting under  
 5 section 4 of this chapter, if the firefighter was not given the  
 6 seventy-two (72) hour period described in subsection (a):

7 SECTION 8. IC 36-8-2.2-7, AS ADDED BY P.L.140-2017,  
 8 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 JULY 1, 2019]: Sec. 7. This chapter does not affect a contract executed  
 10 or renewed before ~~July 1, 2017~~: **July 1, 2019.**

11 SECTION 9. IC 36-8-2.2-8, AS ADDED BY P.L.140-2017,  
 12 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13 JULY 1, 2019]: Sec. 8. The rights of a firefighter **or a police officer**  
 14 provided by this chapter are in addition to and do not abridge, diminish,  
 15 or cancel the rights and privileges of a firefighter **or a police officer**  
 16 that are provided under contract or any other law.

17 SECTION 10. IC 36-8-2.2-9 IS ADDED TO THE INDIANA CODE  
 18 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
 19 1, 2019]: **Sec. 9. Except when on duty or acting in an official**  
 20 **capacity and except where otherwise provided by state or federal**  
 21 **law, a police officer or firefighter may not be:**

- 22 (1) **discouraged from engaging in political activity; or**  
 23 (2) **denied the right to choose to refrain from engaging in**  
 24 **political activity;**

25 **provided such activities do not impede or impair the efficient**  
 26 **operation of the police department or fire department.**

27 SECTION 11. IC 36-8-2.2-10 IS ADDED TO THE INDIANA  
 28 CODE AS A **NEW SECTION** TO READ AS FOLLOWS  
 29 [EFFECTIVE JULY 1, 2019]: **Sec. 10. A police officer or firefighter**  
 30 **may not be:**

- 31 (1) **dismissed;**  
 32 (2) **transferred;**  
 33 (3) **reassigned;**  
 34 (4) **subjected to a personnel action that may result in the loss**  
 35 **of pay or benefits; or**  
 36 (5) **subjected to a disciplinary measure resulting in monetary**  
 37 **loss;**

38 **unless the police officer or firefighter is notified of the action and**  
 39 **the reason for the action in advance of the effective date of the**  
 40 **action.**

41 SECTION 12. IC 36-8-2.2-11 IS ADDED TO THE INDIANA  
 42 CODE AS A **NEW SECTION** TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2019]: **Sec. 11. A police officer or firefighter**  
2 **may not be threatened with or subjected to:**

3 **(1) discipline; or**

4 **(2) denial of a promotion, transfer, or reassignment;**

5 **for exercising rights granted under this chapter.**

6 SECTION 13. IC 36-8-2.2-12 IS ADDED TO THE INDIANA  
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
8 [EFFECTIVE JULY 1, 2019]: **Sec. 12. If a complaint against a police**  
9 **officer or firefighter is dismissed or determined to be**  
10 **unsubstantiated, all evidence of the complaint must be removed**  
11 **from the police officer's or firefighter's personnel file.**

12 SECTION 14. IC 36-8-2.2-13 IS ADDED TO THE INDIANA  
13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
14 [EFFECTIVE JULY 1, 2019]: **Sec. 13. (a) Except as provided in**  
15 **subsection (b), for purposes of a personnel assignment or other**  
16 **personnel action, a police officer or firefighter may not be required**  
17 **to disclose the possession of property or assets, income, debts, or**  
18 **personal or household expenditures, unless the information is**  
19 **obtained through legal process, or indicates a conflict of interest**  
20 **that affects the police officer's or firefighter's performance of**  
21 **official duties.**

22 **(b) This section does not apply to inquiries made by authorized**  
23 **agents of a tax collecting agency.**

