



April 5, 2019

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## ENGROSSED SENATE BILL No. 79

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DIGEST OF SB 79 (Updated April 2, 2019 6:35 pm - DI 131)

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

**Synopsis:** Rights of police officers. Adds provisions establishing minimum due process and personnel rights of a full-time, paid, nonprobationary member of a police department (member) who is the subject of: (1) an internal investigation; or (2) an investigation of a complaint. Adds provisions regarding a member's (1) political activity; (2) disclosure of property and assets; and (3) personnel file.

**Effective:** July 1, 2019.

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### Sandlin, Tomes, Bohacek, Buck

(HOUSE SPONSORS — SPEEDY, BARTELS, LAUER)

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January 3, 2019, read first time and referred to Committee on Local Government.  
January 31, 2019, amended, reported favorably — Do Pass.  
February 11, 2019, read second time, amended, ordered engrossed.  
February 12, 2019, engrossed. Read third time, passed. Yeas 44, nays 5.

HOUSE ACTION

February 26, 2019, read first time and referred to Committee on Veterans Affairs and Public Safety.  
April 4, 2019, amended, reported — Do Pass.

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ES 79—LS 6205/DI 128





April 5, 2019

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.

## ENGROSSED SENATE BILL No. 79

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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 36-8-2.1 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2019]:

4 **Chapter 2.1. Rights of Police Officers**

5 **Sec. 1. This chapter applies only to a police officer who is a**  
6 **full-time, paid, nonprobationary member of a police department.**  
7 **This chapter does not apply to a member of the state police**  
8 **department.**

9 **Sec. 2. As used in this chapter, "interview" means a mandatory**  
10 **discussion to determine facts surrounding a complaint or an**  
11 **internal investigation.**

12 **Sec. 3. As used in this chapter, "police department" means a**  
13 **police department established by:**

- 14 (1) a county;  
15 (2) a city;  
16 (3) a town;  
17 (4) the state;

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- 1 (5) a school corporation (as described under IC 20-26-16); or
- 2 (6) a postsecondary educational institution (as described
- 3 under IC 21-17-5-2 or IC 21-39-4-2).

4 Sec. 4. A police officer as described in section 1 of this chapter  
 5 has at least the rights set forth in this chapter.

6 Sec. 5. (a) This section applies to a police officer who is the  
 7 subject of an investigation.

8 (b) When a police officer is subjected to interview by the police  
 9 officer's department, the following procedures apply:

10 (1) The interview shall be conducted at a reasonable hour,  
 11 preferably at a time when the police officer is on duty, unless,  
 12 in the judgment of the interviewing officer, the seriousness of  
 13 the investigation requires an immediate interview.

14 (2) The interview shall take place at the police department or  
 15 an equivalent office setting designated by the interviewing  
 16 officer.

17 (3) The interviewing officer shall inform the police officer of  
 18 the name, rank, and assignment of the officer in charge of the  
 19 investigation, the interviewing officer, and all other persons  
 20 present during the interview.

21 (c) The interviewing officer shall present the police officer with  
 22 a statement of rights to be signed by the interviewing officer and  
 23 the police officer. The statement of rights must be in substantially  
 24 the following form:

25 **STATEMENT OF RIGHTS**

26 I wish to advise you that you are being questioned as part  
 27 of an official investigation of the \_\_\_\_\_ Department. You  
 28 will be asked questions specifically, directly, and narrowly  
 29 related to the performance of your official duties as a  
 30 \_\_\_\_\_ or concerning your fitness for service as a \_\_\_\_\_. You  
 31 have the constitutional right not to incriminate yourself.

32 Under no circumstances will your statement be used in any  
 33 subsequent criminal court action against you. However,  
 34 factual information contained in the internal affairs file on  
 35 this investigation, including your statement, is generally  
 36 discoverable in civil rights litigation filed in federal or state  
 37 court and may be used to impeach your testimony. In  
 38 addition, this factual information may be used in any  
 39 criminal proceeding in which you are a witness.

40 I further wish to advise you that if you refuse to give a  
 41 statement or answer questions relating to the performance  
 42 of your official duties or fitness for duty, you will be



- 1                   subjected to departmental charges that could result in your  
2                   dismissal from the \_\_\_\_ Department.  
3                   Signed \_\_\_\_\_ (Interviewing officer).  
4                   I have read the above and understand it fully. I sign this  
5                   statement having been advised of the above rights before  
6                   any questions have been asked of me.  
7                   Signed \_\_\_\_\_ (Police officer).  
8                   Date and time \_\_\_\_\_.
- 9                   (d) In a noncriminal case, once a police officer is scheduled for  
10                  an interview described in subsection (b), the officer in charge of the  
11                  investigation must provide the police officer with a copy of the  
12                  complaint, if one exists. In a criminal case, the officer in charge of the  
13                  investigation must inform the police officer of the nature of the  
14                  complaint. The officer in charge of the investigation is not required  
15                  to disclose the name of the complainant to the police officer.
- 16                  (e) An interview session shall be for a reasonable duration of  
17                  time and must allow for personal necessities and rest periods as  
18                  reasonably necessary.
- 19                  (f) An interview of a police officer as described in subsection (b)  
20                  shall be tape recorded at the request of either party. A written  
21                  transcript must be provided to the police officer upon request, at  
22                  no cost to the police officer.
- 23                  (g) If at the time of the interview the police officer is under  
24                  arrest or in custody, the interviewing officer must completely  
25                  inform the police officer of the police officer's federal and state  
26                  constitutional rights regarding self-incrimination prior to the  
27                  commencement of the interview.
- 28                  (h) A police officer may not be required to waive any  
29                  immunities under federal or state law at any point in an  
30                  investigation.
- 31                  (i) A question posed to a police officer must specifically, directly,  
32                  and narrowly relate to the performance of duties or fitness for  
33                  service as a police officer.
- 34                  (j) A police officer shall have the right to be represented by an  
35                  attorney or other representative during an interview where the  
36                  interview relates to the police officer's continued fitness for law  
37                  enforcement service. The police officer shall be provided a  
38                  reasonable period of time to obtain representation, which may not  
39                  exceed seventy-two (72) hours from the time of request, unless  
40                  agreed upon by both parties. The attorney or representative may  
41                  not participate in the interview, except to advise the police officer.
- 42                  (k) A police officer may be required to submit to a polygraph



1 examination or voice stress analysis test only under the following  
2 circumstances:

3 (1) In a criminal or corruption investigation.

4 (2) As a condition of a personnel assignment to certain  
5 sensitive positions.

6 The questions comprising a polygraph examination or voice stress  
7 analysis test must specifically, directly, and narrowly relate to the  
8 performance of official duties or continued fitness to serve. The  
9 results of the tests described in this subsection may not be used in  
10 a subsequent criminal case without the consent of the police officer.

11 Sec. 6. This chapter does not affect a contract executed or  
12 renewed before July 1, 2019.

13 Sec. 7. The rights of a police officer provided by this chapter are  
14 in addition to and do not abridge, diminish, or cancel the rights  
15 and privileges of a police officer that are provided under contract  
16 or any other law.

17 Sec. 8. Except when on duty or acting in an official capacity and  
18 except where otherwise provided by state or federal law, a police  
19 officer may not be:

20 (1) discouraged from engaging in political activity; or

21 (2) denied the right to choose to refrain from engaging in  
22 political activity;

23 provided such activities do not impede or impair the efficient  
24 operation of the police department.

25 Sec. 9. A police officer may not, except as provided in  
26 IC 36-8-3-4 and IC 36-8-10-11, be:

27 (1) dismissed;

28 (2) transferred;

29 (3) reassigned;

30 (4) subjected to a personnel action that may result in the loss  
31 of pay or benefits; or

32 (5) subjected to a disciplinary measure resulting in monetary  
33 loss;

34 unless the police officer is notified of the action and the reason for  
35 the action in advance of the effective date of the action.

36 Sec. 10. A police officer may not be threatened with or subjected  
37 to:

38 (1) discipline; or

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

40 for exercising rights granted under this chapter.

41 Sec. 11. If a complaint against a police officer is dismissed or  
42 determined to be unsubstantiated, all evidence of the complaint



1 must be removed from the police officer's personnel file.

2       **Sec. 12. (a) Except as provided in subsection (b), for purposes of**  
3 **a personnel assignment or other personnel action, a police officer**  
4 **may not be required to disclose the possession of property or**  
5 **assets, income, debts, or personal or household expenditures, unless**  
6 **the information is obtained through legal process or indicates a**  
7 **conflict of interest that affects the police officer's performance of**  
8 **official duties.**

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



## COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 79, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 79 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 6, Nays 1.

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 SENATE MOTION

Madam President: I move that Senate Bill 79 be amended to read as follows:

Page 1, between lines 6 and 7, begin a new paragraph and insert:

**"Sec. 2. As used in this chapter "interview" means a mandatory discussion to determine facts surrounding a complaint or an internal investigation."**

Page 1, line 7, delete "2." and insert "3."

Page 1, line 9, delete "3." and insert "4."

Page 1, line 11, delete "4." and insert "5."

Page 1, line 11, delete "under" and insert **"who is the subject of an investigation."**

Page 1, delete line 12.

Page 1, line 13, delete "interrogation" and insert **"interview"**.

Page 1, line 15, delete "interrogation" and insert **"interview"**.

Page 1, line 17, delete "interrogating" and insert **"interviewing"**.

Page 2, line 1, delete "interrogation" and insert **"interview"**.

Page 2, line 2, delete "interrogation" and insert **"interview"**.

Page 2, line 3, delete "interrogating" and insert **"interviewing"**.

Page 2, line 5, delete "interrogating" and insert **"interviewing"**.

Page 2, line 7, delete "interrogating" and insert **"interviewing"**.

Page 2, line 8, delete "interrogation" and insert **"interview"**.

Page 2, line 9, delete "interrogating" and insert **"interviewing"**.





Page 2, line 10, delete "interrogating" and insert "**interviewing**".

Page 2, line 20, delete "the results of this".

Page 2, line 21, delete "investigation or".

Page 2, line 26, delete "testimony." and insert "**testimony. In addition, this factual information may be used in any criminal proceeding in which you are a witness.**".

Page 2, line 32, delete "Interrogating" and insert "**Interviewing**".

Page 2, line 39, delete "interrogation" and insert "**interview**".

PAGE 3, line 4, delete "interrogation" and insert "**interview**".

Page 3, line 7, delete "interrogation" and insert "**interview**".

Page 3, line 11, delete "interrogation" and insert "**interview**".

Page 3, line 12, delete "is likely to be placed under arrest, the interrogating" and insert "**in custody, the interviewing**".

Page 3, line 15, delete "interrogation" and insert "**interview**".

Page 3, line 23, delete "interrogation" and insert "**interview**".

Page 3, line 24, delete "interrogation" and insert "**interview**".

Page 3, line 29, delete "interrogation" and insert "**interview**".

Page 3, line 42, delete "5." and insert "6."

Page 4, line 2, delete "6." and insert "7."

Page 4, line 6, delete "7." and insert "8."

Page 4, line 14, delete "8." and insert "9."

Page 4, line 14, delete "not" and insert "**not, except as provided in IC 36-8-3-4 and IC 36-8-10-11,**".

Page 4, line 24, delete "9." and insert "10."

Page 4, line 29, delete "10." and insert "11."

Page 4, line 32, delete "11." and insert "12."

(Reference is to SB 79 as printed February 1, 2019.)

SANDLIN

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#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Veterans Affairs and Public Safety, to which was referred Senate Bill 79, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 6, after "department." insert "**This chapter does not apply to a member of the state police department.**".

Page 1, line 7, delete "chapter" and insert "**chapter,**".

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Page 1, line 11, delete "by a county, city, or town." and insert "**by:**

**(1) a county;**

**(2) a city;**

**(3) a town;**

**(4) the state;**

**(5) a school corporation (as described under IC 20-26-16); or**

**(6) a postsecondary educational institution (as described under IC 21-17-5-2 or IC 21-39-4-2)."**

and when so amended that said bill do pass.

(Reference is to SB 79 as reprinted February 12, 2019.)

FRYE R

Committee Vote: yeas 12, nays 0.

