



**THE LAW ENFORCEMENT OFFICER DISCIPLINE ACT
(House Bill 980/Senate Bill 980): A CRITICAL NECESSITY FOR THE
PROMOTION OF PUBLIC SAFETY IN NORTH CAROLINA.**

Population growth, increasing crime, technology changes and police management failures have brought about increasingly dangerous law enforcement workplaces in North Carolina.

North Carolina law enforcement officers are frequently falsely accused and then completely denied any opportunity to challenge false accusations and adverse action taken against them. This process has often left officers ruined, financially and personally, including direct harm to the families and children of officers. Similarly, agencies are often deprived of excellent officers who are pushed out the door based on a complaint by a "dissatisfied customer" who encountered the officer. False accusations against officers can be appropriately addressed in a simple administrative hearing. Such hearings have long been an integral part of the American justice system: when an accuser levels a charge, some process must be used to determine if the charge is valid or not.

HB 980/SB 980 provides a bare minimum hearing procedure for accused officers. It is un-American to allow someone to be accused without having a uniform forum to provide the accused with an opportunity to contest the false charge and clear his or her name.

Current North Carolina law does not provide for uniform investigative procedures, simple hearings or other statewide standards. Consequently, what has emerged is a system where agencies are often deprived of excellent officers because false allegations are not tested.

HB 980/SB 980 should be enacted to ensure officer safety and uniform principles of investigation and adjudication of disputes where officers are accused.

In summary, HB 980/SB 980 is supported by:

1) The General Assembly's tradition of providing procedural protection for public servants including school teachers, legislators and state career police officers;

2) The International Association of Chiefs of Police has advocated procedural protection and uniform disciplinary and investigative standards for police officers;

3) The interests of citizens, taxpayers and the public safety; and

4) The interests of eliminating costly litigation and providing a simple uniform means where all North Carolina municipal officers are treated alike when they are falsely accused.

Complaints against law enforcement officers continue to skyrocket, even for the most trivial feigned allegations.¹ Many of those complaints represent nothing more than angry citizens who have had an unpleasant encounter with an officer, which provokes an internal affairs investigation thus jeopardizing the officer. In many such encounters, law enforcement officers are spit on, harassed, assaulted, battered, stabbed, shot and killed. Over three thousand seven hundred law enforcement officers were murdered from 1945 until 1999, with an average of 66 police murders per year.² SB 980 is needed to ensure that law enforcement values and integrity are protected.

The strategically developed opposition to HB 980/SB 980 appears in an inaccurate, misleading and shameful position paper prepared by the North Carolina Sheriffs' Association sent with a letter dated March 16, 2007. First, the Sheriffs Association has no legitimate role in this bill because the Bill specifically excludes Deputy Sheriffs. See Section 17F-1(1)(Bill applies to officers "other than deputy sheriffs.") SB 980 does not even apply to Sheriffs or Deputies, yet the Sheriffs Association is attempting to advocate against the Bill with false assertions.

Because of the exemption of Deputy Sheriffs, none of the distorted contentions in the Sheriffs' Association position paper are even arguably legitimate. While the Sheriffs Association has for years opposed human rights legislation for deputy sheriffs, their position this year demonstrates their zeal to oppress all law enforcement officers from safety protection.

Sheriffs have enacted protections for themselves as a barrier to false allegations against themselves. Rank and file municipal officers are entitled to minimum procedural protections in SB 980 so as to be able to defend themselves against false accusations.

HB 980/SB 980 does nothing to preclude the imposition of discipline including terminations. Rather, all that HB 980/SB 980 does is to require "minimum procedures" (Section 17F-3) so that a falsely accused officer can have a chance to defend himself or herself. Following the hearing, the employer is still free to impose whatever discipline that it deems appropriate.

**The General Assembly Has Historically Protected Public Servants, At
Least
By Providing Minimum Procedural Protection**

The North Carolina General Assembly has historically enacted legislation to safeguard public servants against career deprivation from false allegations. For example, public school teachers are often subjected to false allegations. The General Assembly responded by enacting N.C.G.S. 115C-325, et. seq., which similarly affords a simple procedural mechanism for a teacher to be able to contest false allegations.

The General Assembly similarly enacted legislation to provide a procedural mechanism to protect legislators from false accusations. N.C.G.S. 120-103. Like police officers, legislators are often subject to false accusations. Consequently, the General Assembly enacted a procedure for "Notice and Hearing" so that the facts can be considered, and legislators protected from false allegations.

The General Assembly has recognized the need for fundamental hearing procedures when state employed police officers are falsely accused. The General Assembly enacted the State Personnel Act, N.C.G.S. 126, et. seq., which affords an excellent working system of adjudicating false allegations against career state police officers, such as troopers and park rangers. The failure to provide similar procedural protection for municipal officers constitutes a form of official discrimination against municipal officers.

Currently and historically, municipal and county police officers in North Carolina have no uniform procedural protection from false accusations. Some towns, cities, counties and Sheriffs have adopted procedural systems to adjudicate false accusations against officers. However, these occasional local policies and procedures vary widely and clearly do not uniformly promote a consistent professional law enforcement standard. Law enforcement is now a profession, and professions are governed by uniform standards.

HB 980/SB 980 is designed as a means to bridge the gap and provide at least basic procedural protection to *all* North Carolina law enforcement officers except Deputy Sheriffs. There is no justification for the discrimination and disparate treatment that currently exists in North Carolina law that provides state police officers procedural protection from false allegations and yet provide nothing for municipal officers.

The IACP Supports Hearings To Resolve Accusations Against Officers

The International Association of Chiefs of Police (IACP) have promulgated a number of standards and model policies whereby IACP advocates that police agencies follow national standards of "fair play." This principle is explained in [IACP Training Key 529](#) which addresses police investigative and disciplinary

procedures. As the IACP explains:

"Police agencies have a duty and responsibility to investigate fully and completely accusations of officer misconduct in order to protect the department's integrity and its credibility in the community, not to mention clear the name of officers who have done no wrong. IACP Training Key 529 at 2.

IACP similarly advocates for police grievance procedures. IACP National Law Enforcement Policy Center Grievance Procedures Concepts and Issues Paper, May 1994. IACP advocates for an "Appeal Hearing." *Id.* at 3. IACP concludes by explaining: "The need for a mechanism for employees to present their grievances and complaints is a generally accepted management concept." *Id.* at 4. The IACP has promulgated a "Model Policy" for agencies so that there is a settled means to resolve accusations against officers. In its position paper, the Sheriffs Association fails to inform the Legislature that IACP supports fair hearings for officers.

The Critics

Opponents of legislation to protect officers from false accusations often contend that the officers can just "go to court" and present their claims and win a huge sum of money. That assertion contains false premises. Unless the officer has been granted a "constitutionally protected property interest" in his or her job, the officer has no right to any hearing or other procedure to contest a false allegation. Thus, the officer has no right for any judicial relief.

The false claim by the Sheriffs' Association that officers cannot be disciplined for whistleblowing is refuted by Garcetti v. Ceballos, 126 S.Ct. 1951 (2006), where the United States Supreme Court ruled that a whistleblowing Assistant District Attorney does not enjoy First Amendment protection for his speech. In Kirby v. City of Elizabeth City, 388 F.3d 440 (4th Cir. 2004), the Federal Court of Appeals in our federal circuit ruled that a police officer could be disciplined for truthfully testifying against his employing chief of police.

In adjudicating cases involving police officers and prosecutors, the courts have made clear that rights to hearings to contest false allegations are to be grounded in state law. SB 980 is such a bill.

Most officers do not want long drawn out expensive litigation. Rather, they want to serve as officers. Judicial proceedings often take several years and are very expensive for taxpayers, agencies and officers. These same critics do not oppose the State Personnel Act, N.C.G.S. 126, et. seq., which provides procedural protection for state law enforcement officers. What's good for a trooper is good for a cop from Manteo, Murphy and elsewhere.

The major problem in having a judicial opportunity to challenge adverse

employment action is that the federal and North Carolina constitutional standards require that the employer recognize or establish "property interest" in one's job before federal due process protection even apply. See Loudermill v. Cleveland Board of Education, 470 U.S. 532 (1985); Soles v. Raleigh Civil Service Commission, 345 N.C. 443 (1997). Law enforcement agencies can structure their employment relationships with officers so as to completely avoid procedural due process protection. This is done in various ways including but not limited to the employer's incorporation of "at will" provisions in job descriptions and in hiring documents. This completely eliminates federal procedural due process protection under a long line of settled cases. Id.; Allred, Employment Law: A Guide For North Carolina Public Employers (3rd ed. 1999; Institute of Government).

Therefore, the present North Carolina system provides the law enforcement agencies with an opportunity to determine whether or not the employee has any right to procedurally challenge false allegations. The present system has generated *disparate treatment and discrimination* among law enforcement officers whereby many state officers are afforded some procedural protection while others receive none.

The North Carolina Sheriffs' Association has circulated background material concerning their position on what they refer to as "The Peace Officers' Bill of Rights."

The Sheriffs' Association identifies six other organizations that are purported to oppose this legislation. However, one of these organizations the North Carolina Law Enforcement Officers Association has gone on record supporting the Law Officer Discipline Act. (HB 980/SB980)

Another organization listed in purported opposition to this legislation is the North Carolina Police Executives Association. However, many of the members and executive officers past and present of this Association support the Law Enforcement Officer Discipline Act. (HB980/SB980)

As a matter of fact, current members include our former NC Division President Jeff Fluck, currently Director of Governmental Affairs for our parent organization, the Southern States PBA, Inc. and our current NC Division President Andy Miller, a Lieutenant with the Durham Police Department.

Those members and the vast majority of North Carolina's 17,000 local law enforcement officers SUPPORT HB980/SB980.

The other organizations listed in purported opposition to the Peace Officers Bill of Rights, have parent organization and/or members who support the Law Enforcement Officer Discipline Act. (HB980/SB980)

Even the North Carolina Sheriffs' Association who characterized HB980/SB980 as a form of the Peace Officer's Bill of Rights, have several members who support HB980/SB980.

HB 980 is not a version of the purported Peace Officers Bill of Rights.

HB 980 contains minimal procedures that provide law enforcement professionals with basic fairness. Members of the Sheriffs' Association Executive Committees, some of which are active or former members of PBA have gone on record supporting the basic fairness and accountability provided in HB 980/SB 980.

Law Enforcement Professionals are not afraid of a disciplinary system that provides fairness, transparency and accountability. HB/SB 980 provides all three. That is why, law enforcement professionals in North Carolina SUPPORT HB980/SB980.

The Rationale for Procedural Protection As Provided In the Proposed Legislation

The laws governing law enforcement employment relations profoundly affects the public safety, the efficiency and quality of police services and the daily lives of thousands of officers, their families and the public. The volume of judicial decisions alone, many of which are conflicting, demonstrates the pervasive problems and confusion confronting agencies and officers. Clarification of the law in this important area is sorely needed and the proposed legislation will promote clear guidelines for agencies and officers to follow.

Law enforcement agencies, officers and the public are well served by meaningful hearings for accused officers. Procedural protection safeguard against mistakes and errors which can deprive an officer of his or her career as well as deprive the agency of a good officer. Procedural protection promotes a feeling of fairness in the workplace. It promotes employee confidence and positive morale. This in turn leads to benefits for all concerned. A positively motivated law enforcement workforce breeds an environment of collegiality, efficiency and esprit de corps. Without procedural protection, erroneous decisions go unchecked. Denial of a fair opportunity to challenge false accusations frustrates the entire system by demoralizing valuable officers.

The importance of procedural protection has long been underscored:
As a Senator Jesse Helms observed:

"[T]oo often law enforcement officers lose their jobs for frivolous reasons - or for no reason at all." Senator Jesse Helms, Congressional Record, January 31, 1991.

CONCLUSION

The proposed legislation will clarify the procedures to be provided to officers. The legislation promotes uniformity so that all officers are treated alike. The legislation will eliminate substantial and costly litigation. The proposed legislation will materially enhance public safety throughout North Carolina.

1. See e.g., N.C. Depart. of Environment and Natural Resources v. Clifton Carroll, 599 S.E.2d 888 (2004 WL 1801774, N.C. Sup. Ct., August 13, 2004)(state employed Park Ranger provided minimum right to hearing under State Personnel Act; through his limited hearing, the officer demonstrated that the allegations were false and the discipline unfounded).

2. U.S. Department of Justice, Federal Bureau of Investigation, cited in Officer Survival Tactics, N.C. Highway Patrol. "A police officer's life is always at risk, no matter how routine the assignment might seem." Floyd, Police Deaths Mount Nationwide, at 1; National Law Enforcement Officers Memorial Fund, Inc., <<http://nleomf.com>.> "On average, one police officer dies within the line of duty nationwide every 54 hours." Id. "There are more than 64,000 criminal assaults against our law officers each year resulting in more than 22,000 injuries." Id. Officer deaths from being run over by vehicles have been substantial. 79 Officers Killed During First Half of Year (1998), at 1. Over fourteen thousand law enforcement officers have been killed. The Officers

