

HOUSE BILL 764

By Davis

AN ACT to amend Tennessee Code Annotated, Title 38,  
Chapter 8, relative to law enforcement.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 38-8-301, is amended by deleting the section and substituting:

As used in this part, unless the context otherwise requires:

(1) "Committee" means a police advisory and review committee;

(2) "Internal affairs unit" means a division of a municipal law enforcement agency that investigates incidents and possible suspicions of law-breaking and professional misconduct attributed to officers on the force;

(3) "Mayor" means the officer vested by either the city charter or general law with the executive powers of a municipality;

(4) "Municipal governing body" or "governing body" means the city council, city commission, or board of mayor and aldermen of a city;

(5) "Municipality" means an incorporated city located in this state, and includes a county having a metropolitan form of government with a population of more than five hundred thousand (500,000), according to the 2020 federal census or any subsequent federal census; and

(6) "Police officer" means an officer, employee, or agent of municipal government, excluding a chief of police, who has a duty imposed by law to:

(A) Maintain public order;

(B) Make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; and

(C) Investigate the commission or suspected commission of offenses.

SECTION 2. Tennessee Code Annotated, Section 38-8-302, is amended by deleting the language "an agency" and substituting the language "a municipality".

SECTION 3. Tennessee Code Annotated, Section 38-8-303, is amended by deleting the language "an agency" and substituting the language "a municipality".

SECTION 4. Tennessee Code Annotated, Section 38-8-304(2), is amended by deleting the word "agency" and substituting the language "the municipality that employs the police officer".

SECTION 5. Tennessee Code Annotated, Section 38-8-305, is amended by deleting the language "the officer's agency" wherever it appears and substituting the language "the municipality that employs the officer".

SECTION 6. Tennessee Code Annotated, Section 38-8-305, is further amended by deleting the language "the agency" and substituting "the municipality that employs the officer"; and by deleting the language "and agency" and substituting "and the municipality that employs the officer".

SECTION 7. Tennessee Code Annotated, Section 38-8-306, is amended by deleting the language "the officer's agency" and "the agency" wherever it appears and substituting the language "the municipality that employs the officer".

SECTION 8. Tennessee Code Annotated, Section 38-8-308, is amended by deleting the last sentence and substituting:

A municipality that employs policer officers may provide for the rights of such officers in addition to this part.

SECTION 9. Tennessee Code Annotated, Section 38-8-312, is amended by deleting the section and substituting:

(a)

(1) A governing body is authorized upon its own initiative and upon the adoption of an ordinance by a two-thirds (2/3) vote at two (2) separate meetings to create a police advisory and review committee for the governing body.

(2) The purpose of the committee is to strengthen the relationship between the citizens of the municipality and the municipal police department, to ensure the timely, fair, and objective review of citizen complaints while protecting the individual rights of police officers, and to make recommendations concerning citizen complaints to the chief of police of the municipality, the mayor, and the municipal governing body.

(b)

(1) The committee consists of seven (7) members, each of whom must:

(A) Possess a reputation for fairness, integrity, and responsibility, and have demonstrated an active interest in public affairs and public service;

(B) Be a registered voter, as defined by § 2-1-104(a)(24), of the jurisdiction for which the committee is established; and

(C) Not be a current employee of a municipal governmental body except for those employed in the field of education.

(2) A committee shall not restrict or otherwise limit membership based upon demographics, economic status, or employment history.

(c)

(1) Committee members are appointed by the mayor and confirmed by a majority vote of the municipal governing body, with initial appointments to be made for the following terms:

(A) Two (2) members of the committee are appointed for one-year terms;

(B) Two (2) members of the committee are appointed for two-year terms; and

(C) Three (3) members of the committee are appointed for three-year terms.

(2) All subsequent appointments, except to fill vacancies, are for three-year terms.

(3) Vacancies occurring other than through the expiration of terms are filled for the remainder of the term of the member being replaced.

(4) No member appointed pursuant to this subsection (b) may serve more than two (2) consecutive terms.

(5)

(A) Upon making the initial appointments to the committee, the mayor shall designate one (1) member of the committee to convene the first regular meeting of the committee.

(B) At its first regular meeting, the committee shall elect one (1) of its members to serve as chair, who serves a term of one (1) year or until a successor is elected. The chair may appoint other officers as the chair deems appropriate.

(d)

(1) Upon the recommendation of a majority of the committee members or by a finding of the mayor, the mayor, with approval of the governing body, may remove a member of the committee for official misconduct or neglect of duty including neglect of any duty specifically enumerated in subsection (g).

(2) Members who are absent from three (3) consecutive regular committee meetings are considered to have vacated their positions on the committee and may be replaced.

(3) Members who cease to possess the qualifications for membership on the committee under subdivision (b)(1) are deemed to have forfeited their position on the committee.

(e) No person may receive compensation for services performed as an appointed member of the committee.

(f) Each person appointed to the committee shall complete the citizen's police academy course offered by the municipal police department and any other training deemed appropriate by the chief of police of the municipality to educate citizens on law enforcement operations, practice, and training. The course must be completed within six (6) months of the date of a person's appointment to the committee.

(g) Members of the committee shall:

(1) Obey all laws regarding an individual's right to privacy and confidentiality of records;

(2) Maintain the integrity of internal affairs unit files; personnel files; and other files, records, or tapes received pertaining to their membership on the committee;

(3) Excuse themselves from participating in the review of a complaint in which they have a personal, professional, or financial conflict of interest; and

(4) Conduct themselves in a manner that ensures public confidence in the fairness, impartiality, and integrity of the committee, and refrain from making inappropriate or prejudicial comments regarding a matter being reviewed by the committee or which may be reasonably expected to be reviewed by the committee.

(h)

(1) The mayor shall select an executive director of the committee whose appointment is subject to the approval of a majority of the members of the committee. The executive director must be a nonclassified exempt employee of the community relations department or similar division for the municipality. The committee shall provide the executive director with support staff and services necessary to fulfill the duties and responsibilities of the position.

(2) The executive director is to be furnished adequate office space, equipment, and supplies to carry out duties imposed under this part.

(3) The executive director must:

(A) Possess a reputation for fairness, integrity, and responsibility and have demonstrated an active interest in public affairs and service;

(B) Be registered to vote in the county in which the executive director is employed;

(C) Not be a former employee of the municipality's police department or the county sheriff's department;

(D) Possess prior investigative experience such as would be possessed by an attorney or a law enforcement officer;

(E) Obey all laws regarding an individual's right to privacy and confidentiality of records;

(F) Maintain the integrity of internal affairs unit files, personnel files and other files, records, and tapes received as a result of the work of the committee;

(G) Not participate in the review of a complaint in which the executive director has a personal, professional, or financial conflict of interest;

(H) Conduct the duties of the office in a manner that maintains public confidence in the fairness, impartiality, and integrity of the committee, and refrain from making inappropriate or prejudicial comments regarding a matter being reviewed by the committee or which may be reasonably expected to be reviewed by the committee; and

(I) Comply with all rules and regulations applicable to other employees of the municipality.

(i)

(1) The executive director shall accept written, sworn complaints from members of the public regarding misconduct of police officers and shall forward the complaints to the head of the internal affairs unit of the municipal police department within three (3) business days of their receipt. Upon receipt of a complaint, the unit shall immediately conduct an investigation of the allegations pursuant to the standard operating procedures of the municipal police department. The executive director may also accept unsworn or anonymous complaints and, if accepted, shall either attempt to resolve the complaints or, if warranted, refer the complaints to the internal affairs unit for investigation.

(2) Upon notification by the head of the internal affairs unit that an investigation of an allegation of police misconduct is closed, whether the

investigation was prompted by a complaint received by the executive director or otherwise, the executive director shall review the unit file or the referral action form and determine if the investigation is complete.

(3)

(A) If the executive director determines that the investigation is complete in accordance with subdivision (i)(2), the executive director shall file a report with the committee at its next regularly scheduled meeting that contains a copy of the internal affairs unit case, summary, or referral action form, and any documentation of disciplinary action pertaining to the case.

(B) If the executive director determines that the investigation is not complete, the executive director shall file a report with the committee at its next regularly scheduled meeting that contains an explanation of the specific information necessary, in the executive director's opinion, for the investigation to be complete.

(j) At each of the regularly scheduled committee meetings, the executive director shall file a report with the committee that details the resolution of unsworn or anonymous complaints the executive director has been able to resolve without an investigation by the internal affairs unit.

(k) The executive director may request legal services and advice from the municipality's law department or outside counsel. If the director of the law department or outside counsel determines that the provision of legal services and advice would constitute a conflict of interest with the department's or counsel's duties to the municipality or other municipal department, then the law director or outside counsel shall advise the executive director of the conflict and the executive director may request the



law director or outside counsel to provide other outside counsel for such legal services and advice.

(l) The executive director shall:

(1) Ensure the proper recording of the minutes of the committee;

(2) Maintain proper records and files pertaining to committee business;

(3) Receive and record all exhibits, petitions, documents, or other materials presented to the committee in support of or in opposition to a question before the committee;

(4) Comply with state law and municipal ordinances regarding notice of meetings;

(5) Provide complainants with information about the complaint process;

(6) Be a notary public;

(7) Administer oaths to complainants and witnesses;

(8) Compile information regarding complaints of police misconduct and any information relevant to such misconduct, whether the complaints are received by a member of the public, the internal affairs unit, or by the executive director; and

(9) Include the information compiled under subdivision (l)(8) in an annual report to the chief of police of the municipality, the mayor, and the municipal governing body of the committee's activities.

(m)

(1) The committee shall review all reports submitted by the executive director in accordance with subdivision (i)(3).

(2) If the executive director finds that an investigation is not complete under subdivision (i)(3)(B), the committee may, by a majority vote of its members:

(A) Request the chief of police of the municipality to conduct a further investigation of the incident, specifying that additional information is needed; or

(B) Direct the executive director to further investigate the incident.

(3) The executive director shall report any additional investigative findings made to the committee, and upon completion of its inquiry, the committee shall report its written findings and conclusions to the chief of police of the municipality, the mayor, and the municipal governing body.

(4)

(A) The committee shall have access to all public records of the municipality it deems necessary to conduct its affairs in furtherance of its duties under this section, including municipal police department records.

Such records include:

(i) Complaints and supporting documents provided by complainants;

(ii) Offense, incident, and arrest reports; and

(iii) Incident-related documents such as schedules, dispatch notes, dispatch tapes and transcriptions, citations, photographs, and records of interviews with complainants, employees, and witnesses.

(B) The committee shall not access nonpublic records of the municipality, including employee medical records, or records that are otherwise exempt from disclosure.

(5)

(A) The committee may, subject to its own specific findings and conclusions, make recommendations to the chief of police of the municipality for the improvement of police policies and activities and to benefit the community.

(B) The chief of police of the municipality or the chief of police's designee shall attend all meetings of the committee to provide information and advice to the committee and to accept the recommendations of the committee, if any.

(6)

(A) The committee shall compile a comprehensive report of its activities at least once a year, with the report to contain statistics and summaries of citizen complaints, including a comparison of the committee's findings and conclusions with those of the internal affairs unit, along with the actions taken by the chief of police of the municipality.

(B) The report compiled in subdivision (m)(6)(A) must be submitted to the:

(i) Executive director for inclusion in the executive director's annual report to the chief of police of the municipality;

(ii) Mayor;

(iii) Municipal governing body;

(iv) Chairs of the civil justice and criminal justice committees of the house of representatives; and

(v) Chair of the judiciary committee of the senate.

(7)

(A) The committee may request legal services and advice from the municipality's law department or outside counsel. Where, in the judgment of the law director or outside counsel, the provision of legal services and advice would constitute a conflict of interest with the department's or counsel's duties to the municipality or any municipal department, the law director or outside counsel must advise the committee of the conflict of interest. The committee may then request the law director or outside counsel to provide other outside counsel to the committee.

(B) If the executive director is prohibited from participating in the review of a complaint pursuant to subdivision (h)(3)(G), the committee may petition the mayor to appoint a temporary assistant to perform the duties of the executive director.

(n)

(1) The committee shall adopt rules of procedure for the transaction of committee business not inconsistent with this section.

(2) Four (4) members of the committee constitute a quorum. No meeting of the committee may commence or continue in the absence of a quorum, and a majority vote of those forming a quorum is required for action to be taken by the committee except where otherwise specified in this section.

(3) Regular meetings of the committee must be held no less than quarterly, on the first Wednesday of January, April, July, and October or as the committee may otherwise elect. A scheduled meeting may be rescheduled at the preceding regular meeting. The chairman and three (3) members of the committee may call a special meeting of the committee upon at least five (5) days' notice.

(4) Committee meetings and records must be open to the public. The committee shall provide an opportunity for public comment about an investigation being reviewed by the committee pursuant to rules and regulations established by the committee.

(5)

(A) The committee may subpoena witnesses to appear before the internal affairs unit or the executive director, as appropriate, and may compel witnesses to provide statements or produce documents in furtherance of an investigation when necessary.

(B) A subpoena issued by the committee must:

(i) Be issued pursuant to majority vote of the committee;

(ii) Not be issued in the form of a blanket authorization, but must specify each document to be produced or witness to testify; and

(iii) Not be issued for documents that are confidential under § 10-7-504.

(C) Notwithstanding subdivision (n)(5)(B)(iii), any document provided to a committee that is confidential under § 10-7-504 or any other

law must be treated as confidential and must not be released to the public.

(o)

(1) The committee shall not review an investigation:

(A) Concerning an incident that occurred prior to July 1, 2023;

(B) Prior to the closure of an investigation by the internal affairs unit or of a criminal investigation;

(C) While the complainant, the officer complained about, or a witness is actively engaged in pursuing a remedy provided by the rules and regulations of the civil service merit board of the municipality; or

(D) If the complainant has initiated, or threatened or given notice of the intent to initiate, litigation against the municipality or its employees.

(2) The committee shall not direct the chief of police of the municipality to alter or impose disciplinary action against an employee of the municipal police department.

SECTION 10. This act takes effect July 1, 2023, the public welfare requiring it.