



NORTH CAROLINA SHERIFFS' ASSOCIATION
LAW ENFORCEMENT OFFICERS AND STATE OFFICIALS
OF NORTH CAROLINA



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Telephone: (919) SHERIFF (743-7433)
Fax: (919) 783-5272

Post Office Box 20049 • Raleigh, N. C. 27619-0049
Suite 120 • 225 Hillsborough Street • Raleigh, N. C.
E-mail: ncsa@ncsheriffs.net • www.ncsheriffs.org

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Wilkes County

March 16, 2007

The Honorable Doug Berger
North Carolina Senate
Legislative Office Building, Room 622
300 N. Salisbury Street
Raleigh, North Carolina 27603-5925

Re: Peace Officer Bill of Rights

Dear Senator Berger:

It is likely that legislation will be introduced this Session that is commonly referred to as the Peace Officer Bill of Rights, although it is frequently introduced under a slightly different bill title. This legislation is adamantly opposed in any form by the Sheriffs of North Carolina, as well as numerous other associations.

As constitutionally elected officers, we are directly responsible to the citizens of our county. We must be able to ensure that the employees of our Sheriff's office are directly responsible to us in providing the services needed by our citizens. Adequate employment law protections already exist and the Peace Officer Bill of Rights is unwise and unnecessary.

On behalf of the Sheriff or Sheriffs in your district and all North Carolina Sheriffs, we respectfully request that you not sponsor or co-sponsor this type of legislation. A position paper that details our opposition is attached. I encourage you to call your Sheriff with any questions, or feel free to call me directly at (704) 920-3001.

Sincerely,

Sheriff Brad Riley, President
North Carolina Sheriffs' Association

Enclosure

Sheriff Pat Green, Franklin County Sheriff's Office
Sheriff David Smith, Granville County Sheriff's Office
Sheriff Peter White, Vance County Sheriff's Office
Sheriff Johnny Williams, Warren County Sheriff's Office





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PEACE OFFICERS' BILL OF RIGHTS

BACKGROUND

Legislation has been introduced in previous sessions of the North Carolina General Assembly that is commonly referred to as the "Peace Officers' Bill of Rights". This legislation is **OPPOSED** by the:

North Carolina Sheriffs' Association

North Carolina Association of Chiefs' of Police

North Carolina Law Enforcement Officers' Association

North Carolina Police Executives' Association

North Carolina Association of County Commissioners

North Carolina League of Municipalities

North Carolina Conference of District Attorneys

This legislation is usually introduced at the request of one or two law enforcement associations that provide attorneys to represent officers in legal actions related to personnel matters.



INTRODUCTION

The Sheriffs of North Carolina have long sought to professionalize all law enforcement for our citizens. Over the years we have worked to set high standards of training and conduct for our deputies and other officers. The North Carolina Sheriffs' Education & Training Standards Commission exemplifies these efforts and the success made through that body in raising the standards of all Sheriffs' personnel. North Carolina is the only state in the nation where a separate commissioning agency exists expressly for the purpose of certifying Sheriffs' deputies and other personnel.

The Sheriff is a Constitutional officer and is the executive officer of the General Court of Justice in North Carolina. The duties of the Sheriff are many and varied and include not just criminal law enforcement but also judicial and correctional functions in both criminal and civil areas.

The office of Deputy Sheriff is unique among law enforcement. Under the law, Sheriffs, as elected officials, are personally civilly responsible and liable for the acts, commissions and omissions of their deputies. The performance and conduct of Sheriffs' deputies is, therefore, of particular concern to their appointing Sheriffs. The authority of Sheriffs to appoint, train, supervise and control their deputies has long been established and supported by law.

All law enforcement officers, by virtue of their special training and conditioning and the duties assigned to them must be held fully accountable for their actions. As guardians of society, certain authority, generally beyond the grasp of ordinary citizens, is extended to law enforcement. Special care must be taken to ensure that abuse and misuse of that

power and authority do not occur. Law enforcement officers, especially Sheriff's deputies, must be held to a higher standard than other public employees. They must be held to close scrutiny and they must be held fully accountable for their actions.

Law enforcement officers enjoy the same Constitutional rights as other citizens and that is as it should be. They should not, however, be placed in a special class, nor should they be granted rights superceding those of others in public service nor of citizens in general.

ANALYSIS

There are numerous legal protections already in the law to protect law enforcement officers, as well as other employees. These protections provide that officers cannot be disciplined based on their race, sex, national origin, religion, etc. Also, current law provides that officers and other employees cannot be disciplined in retaliation for filing claims against the employer concerning certain unlawful employment practices. In addition to these examples, there are numerous other legal protections provided to law enforcement officers and other employees in North Carolina.

Current case law clearly establishes the difference between an internal investigation conducted for administrative purposes and an internal investigation that may result in the criminal prosecution of the officer for a violation of law. The law is clear about when a law enforcement agency can use the results of an internal investigation in an administrative personnel matter, and under what circumstances this information can be used in a criminal prosecution of the officer for a violation of the criminal law. The law provides numerous protections to the officer in cases where the agency intends to use the results of its investigation in a criminal prosecution of the officer.

Since numerous legal protections to employees are already in the law, this legislation creates unnecessary bureaucracy and will "handcuff" Sheriffs and other law enforcement administrators. This legislation will make it much more difficult for Sheriffs and other law enforcement administrators to be sure that the officers that work for them are following their instructions in providing law enforcement services to citizens in their communities.

The bureaucracy that will ultimately be created by this legislation will discourage citizen complaints against law enforcement officers because the citizen could be forced to attend a full blown court type administrative hearing and be required to testify.

This legislation will ultimately punish officers as well. Currently, when a complaint is filed against an officer, the officer's supervisor can talk to the officer and often resolve the problem without any disciplinary action being necessary, simply based on the supervisor's conversation with the officer. If this legislation passes, when a complaint is filed, it is likely that officers will be told that they cannot talk to their supervisors until they have an attorney present. The supervisor will then be forced to suspend the officer from duty pending the outcome of the investigation and administrative hearing. All of this bureaucracy would have been unnecessary, and the matter could have been resolved by a simple conversation between the officer and the officer's supervisor, but the enactment of this legislation will make it likely that this will not happen.

In previous legislative sessions, the proponents of this type legislation have suggested that one way to get it passed might be to exempt Sheriffs and Sheriffs' office personnel from the bill in an attempt to prevent opposition to the bill from the North Carolina Sheriffs' Association. Even if a bill is introduced that exempts Sheriffs' office

personnel, the North Carolina Sheriffs' Association will still oppose this legislation. The suggestion that Sheriffs' office personnel be exempted is merely an attempt to "divide and conquer." If the North Carolina Sheriffs' Association does not oppose this legislation, the legislature could make it apply to all other law enforcement agencies. Then, in the next legislative session, the associations who have sought this legislation will be back at the General Assembly trying to get it to apply to Sheriffs' office personnel. Therefore, it is important that the associations that oppose this legislation stand united, or otherwise the associations will be "divided and conquered" one at a time.

The bill as introduced in 2005 did not establish a detailed administrative hearing and investigation procedure. Rather, it required each law enforcement agency to establish its own procedures. However, it is important to remember that previous versions of this bill that were introduced contained a detailed and lengthy list of the procedures that should be applied to every law enforcement agency. If this version of the legislation is enacted, it is likely that the associations that are asking for this legislation will come back to the General Assembly in the next session and try to get the law amended to include the version of the bill that they originally requested, and it sets out a very detailed process that must be followed in disciplinary cases.

SUMMARY

Sheriffs and other law enforcement administrators must be allowed to manage the agency and personnel that they have been elected or appointed to lead. There are currently many protections in the law that protect the rights of employees in disciplinary investigations. This legislation would discourage citizens from filing complaints against officers, would discourage officers from talking with their supervisors to quickly resolve personnel matters, and would "handcuff" Sheriffs and other law enforcement administrators

who are attempting to lead their agency. This legislation would also cause most personnel matters (even minor ones) to result in a full blown administrative hearing or trial with lawyers to represent the officer, which will require legal counsel for the law enforcement agency as well.

The protections provided to officers in current law are adequate, and the additional bureaucracy created by this legislation is not necessary.

The Sheriffs of North Carolina are fundamentally opposed to the so-called Peace Officers' Bill of Rights. It is not good public policy.

Revised-NC: December 21, 2006