



Police 'Bill of Rights' grants special protection for officers accused of misconduct

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Among the demands for police reform, some activists have called to tear up or rewrite the Law Enforcement Officers' Bill of Rights, state-by-state rules that determine how officers are investigated when they're accused of misconduct.

Critics say these provisions have fueled incidents of police abuse by making it virtually impossible to discipline bad cops. According to police organizations, these laws guarantee due process for officers and ensure they're not subjected to frivolous, unfair accusations of wrongdoing.

There are at least 14 states that have a Law Enforcement Officers' Bill of Rights or LEOBORs outlining the procedures for investigating and disciplining officer abuse or misconduct. Scores of other police departments around the country have similar protections negotiated into union contracts.

While the laws vary by state, they share many of the same general principles. Police are investigated within their department and do not have to submit to questioning by an outside review board, except in cases of criminality. Officers can see the charges and evidence in the case brought against them and have limits on how they are questioned.

Moreover, officers are afforded a period of one to several days of "cooling off" before they have to answer questions and can have legal and union representation present at that time. If charges are dropped or the officer is cleared of wrongdoing, the department never has to acknowledge the investigation.

Researchers have noted that no other public employees enjoy equivalent protections when it comes to disciplinary matters. Law enforcement organizations have argued the special treatment is warranted because police are held to a higher standard and serve visibly in positions that often involve conflict.

"You have officers who can lose their careers if someone makes a false allegation," said Larry Cosme, national president of the Federal Law Enforcement Officers Association (FLEOA). "The bill of rights is an important thing for officers. If you want to get quality individuals in law enforcement, you need to have protections in there."

But the separate standards have fueled doubts about police accountability. Wornie Reed, director of the Virginia Tech Race and Social Policy Research Center insisted that repealing the Law Enforcement Officers' Bill of Rights and addressing union contracts are two of three fundamental issues that have to be addressed in police reform.

"All the other stuff being talked about around the country is a waste of time," Reed argued. "Saying you're going to get better police training is a joke. Because the problem is not the lack of training of officers, it's the policy and procedures of policing."

The NAACP previously criticized the laws for promoting a "double-standard" in the investigation and prosecution of police misconduct. "Instead of prioritizing the search for justice, these laws focus on giving police officers the ability to craft a narrative of events that get them out of trouble," the group wrote in police reform recommendations. The group is currently joining dozens of others in urging the repeal of Maryland's LEOBOR.

Minnesota is among the states with LEOBORs, where Minneapolis police officer Derek Chauvin was investigated at least 17 times for misconduct complaints before he was charged with the killing of George Floyd last month.

Kentucky, where police fatally shot Breonna Taylor while serving a no-knock warrant, also has a LEOBOR, which outlines the procedures for a criminal or administrative investigation of a police officer. Last month, the Louisville Metropolitan Police Department completed an internal investigation and determined Officer Brett Hankison violated procedure when he fired into Taylor's apartment.

State lawmakers in Rhode Island are creating a task force to review their Officers' Bill of Rights after a petition called to repeal the state's police protections. "Public safety officers are to protect public safety, and there should not be ways to prevent those who pervert justice from being held accountable," said Sen. Harold Metts, who sponsored the review.

Other states with LEOBORs are California, Delaware, Florida, Illinois, Louisiana, Maryland, Nevada, New Mexico, Virginia, West Virginia and Wisconsin.

Attempts to pass a Police Officers' Bill of Rights began in Congress in 1971 and continued for decades with the encouragement of police unions. Former Delaware Sen. Joe Biden repeatedly sponsored legislation to create a national Police Officers Bill of Rights beginning in 1991, several weeks after the Rodney King beating in Los Angeles.

The legislation largely focused on worker protections and employee rights, according to a statement by the Biden campaign. The 1991 bill included language to limit the time and circumstances under which an officer could be questioned and required the officer to be informed about the nature of the investigation before being questioned. Former New York Police Commissioner Lee P. Brown argued at the time that Biden's bill would "erode advances that have been made in holding police officers and their supervisors accountable for the use of excessive force and other forms of misconduct."

Between 2000 and 2007, Biden teamed up with Kentucky Republican Sen. Mitch McConnell four times to enact a nationwide bill of rights for police. The State and Local Law Enforcement Discipline, Accountability, and Due Process Act. The bill included many of the protections for

police officers provided by state LEOBORs. It also allowed officers accused of wrongdoing to review their evidentiary files before submitting to questions.

Biden's record on policing and criminal justice have been criticized repeatedly, particularly his role in drafting the 1994 Violent Crime Control and Law Enforcement Act, which is said to have expanded significantly the mass incarceration of Black Americans.

The Law Enforcement Officers' Bills of Rights were originally developed in the late 1960s and early 1970s amid growing demands by civil rights advocates for police accountability. They originally called for civilian review boards to investigate alleged officer misconduct and pushed to hold officers accountable for alleged wrongdoings. Rank and file officers responded to the movement by seeking greater protections for themselves in misconduct investigations.

There are concerns that police unions have gone too far in securing protections for officers, including so-called bad cops who have a history of serious misconduct allegations.

"The focus is always going to be on why it is so difficult to get rid of the bottom 10% of officers who create a huge problem for everyone else," said Trevor Burrus, a research fellow at the Cato Institute's Center for Constitutional Studies. "We should be focusing on figuring out how that reform works and why they're being insulated from answering for their bad conduct."

Rolling back LEOBORs could play a part in police reform and increasing accountability, he noted. But the problems extend beyond the several states to union contracts and other arrangements that can allow officers with repeated misconduct complaints to stay on the force for long periods of time.

Like LEOBORs, many union contracts dictate that officers can only be investigated by a fellow officer, rather than a civilian review board. They allow a "cooling off" period before officers answer questions and union arbitrators often oversee the proceedings to ensure the procedures are followed precisely.

"All of those work together to make it unnecessarily difficult to fire even criminally convicted officers from the force," Burrus said. In some cases, union arbitrators are able to overturn a police department's disciplinary actions against an officer, allowing him or her to remain on the force despite violating policies.

Other provisions make it difficult to determine which officers may have disciplinary issues because of rules allowing disciplinary records to be expunged after 2-5 years. Law enforcement personnel files are confidential in 23 states.

Across the United States, police departments are predominantly responsible for policing themselves. They have internal review processes and procedures but are still subject to outside accountability. For more than two decades, every administration has used a provision in the 1996 crime bill to bring "pattern or practice" suits against police departments through the Department of Justice.

These Justice Department investigations were used extensively during the Obama administration to expose systemic problems within police departments related to misconduct, racial profiling and other abuses of power. They have virtually ceased under the Trump administration. Police departments found to violate civil rights or other laws have been forced to reform under consent decrees, as was the case in Baltimore, Chicago and Ferguson, Missouri.