

67C.321 Actions taken by chief against officers -- Written statement -- Answer -- Citizen charges of misconduct.

- (1) Any officer may be removed, suspended for a period not to exceed thirty (30) days, laid-off, or reduced in grade by the chief for any cause which promotes the efficiency of the services, but before any such action is taken by the chief against any officer, the chief shall furnish the officer concerned with a written statement of the reasons why the described action is being taken. The officer may be reduced, removed, suspended for a period not to exceed thirty (30) days, or laid-off from the date the written statement of reasons is served upon her or him. Each officer removed, suspended for a period not to exceed thirty (30) days, laid-off, or reduced in grade shall be allowed a period of ten (10) days within which the officer may file a written answer to the charges and the reasons which caused her or his suspension, removal, or reduction. This answer shall be made a part of the official records of the police department. No trial or examination of witnesses shall be required in any such case except at the discretion of the chief. The chief shall likewise furnish a copy of the written charges and reasons for her or his action to the board.
- (2) Any citizen who makes written, sworn charges of misconduct concerning the actions of any police officer shall present the charges to the chief of police who shall investigate the charges. The chief of police shall determine what action, if any, shall be taken against the officer, subject to the limitations set out in this chapter. The citizen may appeal the determination of the chief of police to the board.

Effective: March 18, 2003 History: Amended 2003 Ky. Acts ch. 118, sec. 9, effective March 18, 2003. -- Created 2002 Ky. Acts ch. 339, sec. 11, effective July 15, 2002.

67C.323 Review of disciplinary actions -- Hearings -- Appeal.

In all cases provided for in KRS 67C.321, the action of the chief shall be final except in the following cases:

- (1) Every action in the nature of a dismissal, suspension, or demotion of a nonprobationary officer made by the chief shall be subject to review by the board at the request of any officer affected by KRS 67C.301 to 67C.327. An appeal to the board of a dismissal, demotion, or forty (40) hour or more suspension of a nonprobationary officer shall be heard by the full board. The board shall give notice and hold a public hearing. After the hearing, the board shall retire in executive session to discuss the evidence introduced at the hearing and to make its determination and conclusion. While in executive session, the board shall not receive any further evidence or communication from any source prior to reaching its determination and conclusion. The board, while in executive session, may request and receive legal advice from board counsel on specific legal issues which may arise during deliberations. If a majority of the members of the board are of the opinion that the action of the chief is unjustified or unsupported by proper evidence, the order of the chief may be set aside and revoked by the board, and the board may impose the penalty or punishment it deems necessary and appropriate, if any; provided however, the

board shall not impose a penalty or punishment in excess of the action of the chief. No officer shall be removed or dismissed except as provided for in this section.

- (2) An appeal to the board of a suspension of a nonprobationary officer of less than forty (40) hours may be heard by the full board or any hearing officer secured by the board. If the appeal is heard by a hearing officer, all rules established by the board relating to appeals of disciplinary actions shall be applicable. After the hearing, the hearing officer shall complete and submit to the board, no later than thirty (30) days after the hearing, a written recommended order which shall include his findings of fact, conclusions of law, and recommended disposition of the appeal, which may include recommended penalties. The recommended order shall also include a statement advising the appealing officer and chief fully of their exception and appeal rights. A copy of the hearing officer's recommended order shall be sent to the appealing officer and chief. Each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the board. The board shall consider the record including the recommended order in any exceptions duly filed to a recommended order, and accept and adopt or reject or modify, in whole or in part, the recommended order, or remand the appeal of the matter, in whole or in part, to the hearing officer for further proceedings as appropriate. The final order of the board shall be in writing. If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The board shall render a final order in an administrative hearing within thirty (30) days after receipt of the hearing officer's recommended order.
- (3)
 - (a) Every action of a dismissal, suspension, or demotion made by the board shall be final, except that any person aggrieved may, within thirty (30) days after the action, appeal to the Circuit Court of the county in which the board meets. The board shall be named respondent as the consolidated local government police force merit board, and service shall be had on the chairman of the board. Notice of the appeal shall be given to the chief or the officer if not already a party to the appeal as real parties in interest. The appeal taken to the Circuit Court shall be docketed by the clerk as a civil action with appropriate judicial review of an administrative action or decision.
 - (b) The judgment of the Circuit Court shall be subject to appeal to the Court of Appeals. The procedure as to the appeal to the Court of Appeals shall be the same as in any civil action.

Effective: June 25, 2013 History: Amended 2013 Ky. Acts ch. 95, sec. 3, effective June 25, 2013. -- Amended 2003 Ky. Acts ch. 118, sec. 10, effective March 18, 2003. -- Created 2002 Ky. Acts ch. 339, sec. 12, effective July 15, 2002

67C.325 Rights of officer brought before board -- Subpoenas.

Procedural due process shall be afforded to any police officer brought before the board. The officer shall be given a prompt hearing by the board, have an opportunity to confront his or her accusers, and have the privilege of presenting the board with evidence. The board shall have the

power to issue subpoenas attested in the name of its chairman, to compel the attendance of witnesses, to compel the production of documents and other documentary evidence, and so far as practicable, conduct the hearing within the Kentucky Rules of Civil Procedure. Upon a showing of proper need, the board shall issue subpoenas to compel the attendance of witnesses, or to compel the production of documents and other documentary evidence for the benefits of the officer or the chief at the request of the officer or the chief.

Effective: March 18, 2003 History: Amended 2003 Ky. Acts ch. 118, sec. 11, effective March 18, 2003. -- Created 2002 Ky. Acts ch. 339, sec. 13, effective July 15, 2002.

67C.326 Review of citizen complaints against police officers.

- (1) In order to establish a minimum system of professional conduct of the police officers of consolidated local governments of this Commonwealth, the following standards of conduct are stated as the intention of the General Assembly to deal fairly and set administrative due process rights for police officers of the consolidated local government and at the same time providing a means for redress by the citizens of the Commonwealth for wrongs allegedly done to them by police officers covered by this section:
 - (a) Any complaint taken from any individual alleging misconduct on the part of any police officer, as defined herein, shall be taken as follows:
 1. If the complaint alleges criminal activity on behalf of a police officer, the allegations may be investigated without a signed, sworn complaint of the individual;
 2. If the complaint alleges abuse of official authority or a violation of rules and regulations of the department, an affidavit, signed and sworn to by the complainant, shall be obtained;
 3. If a complaint is required to be obtained and the individual, upon request, refuses to make allegations under oath in the form of an affidavit, signed and sworn to, the department may investigate the allegations, but shall bring charges against the police officer only if the department can independently substantiate the allegations absent the sworn statement of the complainant;
 4. Nothing in this section shall preclude a department from investigating and charging an officer both criminally and administratively;
 - (b) No threats, promises, or coercions shall be used at any time against any police officer while he or she is a suspect in a criminal or departmental matter. Suspension from duty with or without pay, or reassignment to other than an officer's regular duties during the period, shall not be deemed coercion. Prior to or within twenty-four (24) hours after suspending the officer pending investigation or disposition of a complaint, the officer shall be advised in writing of the reasons for the suspension;
 - (c) No police officer shall be subjected to interrogation in a departmental matter involving alleged misconduct on his or her part, until forty-eight (48) hours have

expired from the time the request for interrogation is made to the accused officer, in writing. The interrogation shall be conducted while the officer is on duty. The police officer may be required to submit a written report of the alleged incident if the request is made by the department no later than the end of the subject officer's next tour of duty after the tour of duty during which the department initially was made aware of the charges;

- (d) If a police officer is under arrest, or likely to be arrested, or a suspect in any criminal investigation, he shall be afforded the same constitutional due process rights that are accorded to any civilian, including but not limited to the right to remain silent and the right to counsel, and shall be notified of those rights before any questioning commences. Nothing in this section shall prevent the suspension with or without pay or reassignment of the police officer pending disposition of the charges;
- (e) Any charge involving violation of any consolidated local government rule or regulation shall be made in writing with sufficient specificity so as to fully inform the police officer of the nature and circumstances of the alleged violation in order that he may be able to properly defend himself. The charge shall be served on the police officer in writing;
- (f) When a police officer has been charged with a violation of departmental rules or regulations, no public statements shall be made concerning the alleged violation by any person or persons of the consolidated local government or the police officer so charged, until final disposition of the charges;
- (g) No police officer as a condition of continued employment by the consolidated local government shall be compelled to speak or testify or be questioned by any person or body of a nongovernmental nature; and
- (h) When a hearing is to be conducted by any appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes, the following administrative due process rights shall be recognized and these shall be the minimum rights afforded any police officer charged:
 1. The accused police officer shall have been given at least seventy-two (72) hours' notice of any hearing;
 2. Copies of any sworn statements or affidavits to be considered by the hearing authority and any exculpatory statements or affidavits shall be furnished to the police officer no less than seventy-two (72) hours prior to the time of any hearing;
 3. If any hearing is based upon a complaint of an individual, the individual shall be notified to appear at the time and place of the hearing by certified mail, return receipt requested;
 4. If the return receipt has been returned unsigned, or the individual does not appear, except where due to circumstances beyond his control he cannot appear,

at the time and place of the hearing, any charge made by that individual shall not be considered by the hearing authority and shall be dismissed with prejudice;

5. The accused police officer shall have the right and opportunity to obtain and have counsel present, and to be represented by the counsel;

6. The appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes shall subpoena and require the attendance of witnesses and the production by them of books, papers, records, and other documentary evidence at the request of the accused police officer or the charging party. If any person fails or refuses to appear under the subpoena, or to testify, or to attend, or produce the books, papers, records, or other documentary evidence lawfully required, the appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes may report to the Circuit Court or any judge thereof the failure or refusal, and apply for a rule. The Circuit Court, or any judge thereof, may on the application compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court;

7. The accused police officer shall be allowed to have presented, witnesses and any documentary evidence the police officer wishes to provide to the hearing authority, and may cross-examine all witnesses called by the charging party;

8. For any police officer suspended with or without pay who is not given a hearing as provided by this section within sixty (60) days of any charge being filed, the charge then shall be dismissed with prejudice and not be considered by any hearing authority and the officer shall be reinstated with full back pay and benefits; and

9. The failure to provide any of the rights or to follow the provisions of this section may be raised by the officer with the hearing authority. The hearing authority shall not exclude proffered evidence based on failure to follow the requirements of this section but shall consider whether, because of the failure, the proffered evidence lacks weight or credibility and whether the officer has been materially prejudiced.

- (2) Any police officer who shall be found guilty by any hearing authority of any charge may bring an action in the Circuit Court in the county in which the consolidated local government is located to contest the action of that hearing authority, and the action shall be tried as an original action by the court.
- (3) The judgment of the Circuit Court shall be subject to appeal to the Court of Appeals. The procedure as to appeal to the Court of Appeals shall be the same as in any civil action. As the provisions of this section relate to a minimum system of professional conduct, nothing in this section shall be construed as limiting or in any way affecting any rights previously afforded to police officers of the consolidated local government by statute, ordinance, or working agreement.

Effective: June 24, 2015 History: Created 2015 Ky. Acts ch. 119, sec. 2, effective June 24, 2015.