



City of Columbia

701 East Broadway, Columbia, Missouri 65201

Department Source: Law

To: City Council

From: City Manager & Staff

Council Meeting Date: November 1, 2021

Re: Amendments to Chapter 21 of the City Code relating to the Citizens Police Review Board

Executive Summary

Recent changes to state law (Section 590.502 RSMo, also known as SB 26) have necessitated changes to Chapter 21 of the City Code. If adopted by council, the substitute bill will update the Code so that it does not conflict with the new law, while still preserving the model of civilian oversight adopted by the City of Columbia.

Discussion

On July 14, 2021, Governor Parson signed into law Senate Bill 26, which contains a police officer bill of rights. Senate Bill 26 went into effect on August 28, 2021 and is now codified in Section 590.502 RSMo. Some of the provisions of the new law include:

- The law applies to any officer who is subjected to administrative investigation or questioning “that the officer reasonably believes could lead to disciplinary action... or placement on a status that could lead to economic loss. Economic loss applies to “and economic loss including, but not limited to, loss of overtime accrual, overtime income, sick time accrual, sick time, secondary employment income, holiday pay, and vacation pay.”
- The officer must receive 24-hour advance notice prior to any interview or interrogation.
- A police officer accused of misconduct would be informed in writing of the nature of the alleged violation and the individual who will be conducting the investigation.
- A complaint must be supported by a written statement which includes the personal identifying information of the person filing the complaint.
- A copy of the complaint must be given to the officer.
- Prior to an interview of the officer, the police officer accused of misconduct and their attorney must have the opportunity to review any audio or video in the possession of the department.
- The officer may only be questioned or interviewed while on duty.
- The officer may not be questioned by more than two investigators and must be provided the name, rank and command of the investigators.
- Separate investigators must be assigned to investigate alleged department policy violations and alleged criminal violations.
- The officer may not be “threatened, harassed, or promised rewards to induce them into answering any question.”
- Although an accused police officer may be compelled to give a statement to their employer during investigation of a workplace policy violation, that statement cannot be used against them in any criminal case brought against the officer and the officer must be so advised (known as a *Garrity* warning).



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- The department has 90 days from receipt of a citizen complaint to complete an investigation. Two 60 day extensions may be granted for good cause. A criminal investigation is not limited to two 60 day extensions.
- If the officer does not consent to an extension, an administrative hearing is required in order to seek any 60 day extension.
- Within 5 days of the conclusion of the investigation, the investigator is required to inform the officer of the investigative findings and recommendations for further action.
- A complete copy of the investigation is required to be provided to the officer within 5 days of a request.
- The determination of a final disciplinary decision must occur within 90 days following the completion of the investigation.
- An officer who is suspended without pay, demoted, terminated or “placed on a status resulting in economic loss” is entitled to a full due process hearing.
- The due process hearing is required to be confidential and not subject to disclosure under the Sunshine Law.
- Officers have a right to compensation for any “economic loss incurred during an investigation if the officer is found to have committed no misconduct.”
- Employers are required to “defend and indemnify law enforcement officers from and against civil claims made against them in their official and individual capacities if the alleged conduct arose in the course and scope of their obligations and duties as law enforcement officers.”
- An employer does not have to defend an employee if the officer is convicted of, or pleads guilty to, criminal charges arising out of the same misconduct.
- Allegations of police misconduct are closed to Sunshine Law requests, except by court order, subpoena or consent of the officer.
- The law excludes the chief of police from the protections.
- The law allows an officer to seek judicial enforcement of the requirements of Section 590.502 RSMo. Any action taken in violation of Section 590.502 is void.

Section 590.502 RSMo primarily impacts the police internal affairs processes, human resources investigations of police officers, and the work of the Citizens Police Review Board (CPRB) and the Personnel Advisory Board (PAB). The Police and Human Resources Departments are reviewing and updating their internal policies and procedures to comply with the new requirements. In addition, changes to Chapters 19 and 21 of the City's Code are required to ensure compliance with state law.

On September 20, 2021, the City Council adopted changes to Chapter 19 of the City Code. At that time the modifications to Chapter 21 were tabled to allow City staff additional opportunities to meet with the Columbia Police Officers Association's (CPOA) related to the changes to Chapter 21. Based on those discussions and the prior review by the CPRB, a substitute bill has been prepared for Council consideration.

The CPRB recommended that community service aides be removed from the Board's jurisdiction. The rights provided in Section 590.502 RSMo only apply to commissioned peace officers. Because community service aides do not hold a police commission and do not have



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the power to arrest, the CPRB thought that community service aides should be treated similar to other City employees who are not licensed police officers. Complaints about a community service aide would be handled by the City pursuant to its usual processes related to complaints regarding employee activities and the provisions of Chapter 19 of the City Code. CPOA did not object to this change and this change was incorporated in the substitute bill.

The CPRB also recommended that appeals from police officers be removed from the CPRB's jurisdiction. CPOA disagreed with the Board's recommendation on this issue. In reviewing the history, there has been no use of the CPRB by an officer in seeking to appeal the finding on a complaint so the practical effect of leaving the officer right of appeal to the CPRB is minimal, but provides meaningful parity to the officer. Because it was important to CPOA, the substitute bill retains a police officer's right to appeal to the CPRB. However, after the appeal to the CPRB the officer does not have a right to appeal to the City Manager under Chapter 21 and must use the procedures in Chapter 19 for further disciplinary review (which includes an appeal to the City Manager).

Given the current structures of both the CPRB and PAB, the most problematic portions of Section 590.502 are the time limitations for conducting an investigation and for rendering a disciplinary decision. As outlined above the new law provides the law enforcement agency conducting an investigation has 90 days from receipt of a citizen complaint to complete the investigation. There is the opportunity for up to two 60 day extensions upon a showing of good cause. If there is an ongoing criminal investigation, there is no limitation on the amount of 60 day extensions. Once the administrative investigation has concluded, the officer is required to be informed in writing of the investigative findings and any recommendation for further action. After the investigation is concluded the final disposition of the complaint and final disciplinary decision is required to be rendered within 90 days.

In order to retain the existing model of civilian oversight in Columbia so that it remains meaningful, the substitute bill provides for the citizen appeal to the CPRB to occur during the complaint investigation stage contemplated by Section 590.502 RSMo. The bill provides for the police chief to make and communicate a **preliminary** determination on the complaint (which is communicated to the complainant) as well as a **preliminary** recommendation for disciplinary action (which is confidential and communicated only to the police officer) during the initial investigation stage on the complaint. While still in the investigation stage and prior to any disciplinary decision by the chief, the complainant or officer may appeal the preliminary determination to the CPRB. If the complainant or officer appeal the preliminary determinations to the CPRB, the police chief will be afforded the benefit of the civilian review and recommendations of the CPRB prior to making a final determination on the disposition of the complaint and any potential disciplinary action.

By frontloading the appeal to the CPRB into the investigation period, the substitute bill complies with the statutory requirements in Sections 590.502 and 590.653 RSMo. It also allows time for the officer to file a grievance under Chapter 19 and appeal the disciplinary action to the PAB during the second 90 day period in which the City is required to render a final



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disciplinary decision. The disciplinary action does not become final until after conclusion of the grievance process in Chapter 19.

In order to meet the time limitations contained in Section 590.502 RSMo, the substitute bill also reduces many of the time periods currently set forth in Chapter 21. There is a reduction in the time period for filing an appeal or jurisdictional review from thirty (30) days to ten (10) days. It also includes a requirement that the police chief provide the Police Department records related to a complaint to the CPRB within two (2) business days of the date the appeal is filed and reduces the time period by which the police chief can reconsider the chief's decision from ten (10) days to five (5) days. Complainant appeals of the police chief's preliminary determination to the City Manager must be filed in five (5) days. While the reduction in the time periods are not ideal, the time periods must be shortened in order to allow for the investigation and the civilian oversight by the CPRB to occur within the statutory time limits. Those persons who are not able to obtain relief within the statutorily mandated time restraints may seek relief from the courts for any actionable complaint of police misconduct.

The substitute bill also addresses necessary changes in the transparency provisions of Chapter 21 brought about by the new law. In 2009, when the City Council created the review board, the City Council chose to add transparency to the maximum extent allowed by the law existing at that time. Section 590.502 RSMo states that "[a]ll records compiled as a result of any investigation subject to the provisions of this section shall be held confidential and shall not be subject to disclosure under Chapter 610, except by lawful subpoena or court order, by release approved by the officer, or as provided in Section 590.070 RSMo." The substitute bill will provide for the confidentiality of records compiled as a result of any investigation into complaints filed on or after August 28, 2021 (the effective date of the new law), and will require the CPRB conduct its reviews of those complaints in closed session.

As drafted, the substitute bill will retain transparency for complaints filed before August 28, 2021, because those complaints are not subject to the provisions of Section 590.502 RSMo. CPOA disagrees with this interpretation of the new law and is seeking a declaratory judgment from the Boone County Circuit Court as to whether or not the law applies to complaints that were pending prior to August 28, 2021. If CPOA is successful in their litigation, the provisions retaining transparency for complaints filed prior to August 28, 2021 may easily be removed from the city code by further Council action to simply delete that section.

Fiscal Impact

Short-Term Impact: Unknown at this time.

Long-Term Impact: Unknown at this time.

Strategic & Comprehensive Plan Impact

[Strategic Plan Impacts:](#)

Primary Impact: Organizational Excellence, Secondary Impact: Inclusive Community, Tertiary Impact: Safe Neighborhoods



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[Comprehensive Plan Impacts:](#)

Primary Impact: Not Applicable, Secondary Impact: Not applicable, Tertiary Impact: Not Applicable

Legislative History

Date	Action
09/20/2021	Ord. No. 024757-Council authorized changes to Chapter 19 of the City Code to comply with Section 590.502 RSMo.

Suggested Council Action

Adoption of the amendment sheet and approval of the substitute bill.