

Wilmington, Delaware
July 9, 2020

#4842

WHEREAS, 53 years ago American police officers successfully gained a special layer of employee due process protections when faced with investigations for official misconduct. This special layer of protection is commonly referred to as the Law Enforcement Officers Bill of Rights; and

Sponsor:

**Council
Member
Johnson**

WHEREAS, these protections exist within sixteen states, including the State of Delaware, each with some different statutes; and

Co-Sponsors:

**Council
President
Shabazz**

WHEREAS, the protections granted to police officers are more specific than those provided to other public employees in federal, state, or local civil service laws; and

**Council
Member
Harlee**

WHEREAS, the Law Enforcement Bill of Rights is intended to protect American law enforcement personnel from investigation and prosecution arising from conduct during official performance of their duties, and provides them with privileges based on due process additional to those normally provided to other citizens; and

WHEREAS, the history of the Law Enforcement Bill of Rights began in the 1960s following the result of rulings by the U. S. Supreme Court in two cases 1) Garrity v. New Jersey (1967), and, 2) Gardner v. Broderick (1968) where police officers were placed under investigation in Garrity et.al. for fixing traffic tickets and for bribery in Gardner et.al.; and

WHEREAS, officers in each case during their interrogations by police supervisors were told and warned that if they didn't answer questions regarding the actions brought against them in the Garrity case or sign a waiver of immunity in the Gardner case the officers would be charged with a crime, possibly convicted, and lose their jobs which did happen; and

WHEREAS, when each of these cases were appealed to the U. S. Supreme Court the rulings of the Court in each case found that threatening to fire someone for refusing to answer questions or sign a waiver of immunity when that person claimed the 5th in fact violated the Fifth Amendment protection in the U.S. Constitution against self-incrimination and thus those statements should not have been admissible in a criminal proceeding causing the Court to overturn the convictions and subsequent actions taken including loss of jobs; and

WHEREAS, these cases and rulings by the U.S. Supreme Court spurred a number of states in the U.S. to incorporate Law Enforcement Officers' Bill of Rights into their state Codes or in a number of other states similar provisions have been incorporated into their contracts with police unions; and

WHEREAS, the Delaware General Assembly passed legislation entitled Title 11: Crimes and Criminal Procedure, Victims of Crimes, Chapter 92. Law Enforcement Officers' Bill of Rights, in 1974 incorporating the Law into the Delaware State Code; and

WHEREAS, due to a number of provisions in the Delaware Law Enforcement Officers Bill of Rights for Police Departments in municipalities and towns throughout the State including the largest City of Wilmington, issues of transparency and accountability between law enforcement Departments, the negative actions of some law enforcement officers with the communities they take an oath to serve and protect have become problematic, untrustworthy, racially suspect and ethically questionable; and

WHEREAS, the Delaware LEBOR includes provisions that prevent public access to Officer and Police Department reports on deadly use of force incidents including when guns are fired, prevents access by legal counsel of defendants to receive internal affairs investigation records of law enforcement officers accused of wrongdoing, all records compiled as a result of an investigation or contractual disciplinary grievance procedure remain confidential and "shall not be released to the public", complaints made by other citizens on police actions are all confidential and are not to be released to the public; and, Police Departments cannot publicly acknowledge that an officer is under investigation or that charges are dropped nor publicly acknowledge that the investigation ever took place or reveal the nature of the complaint; and

WHEREAS, in Delaware based on a report conducted by WHY Y from 2005 to the present, Delaware police have shot 56 people, with officers killing 30 of them, including an innocent robbery victim, with nearly half of those shot being Black people who only comprise 22 percent of the state's population, there are compelling reasons based on police shootings of Black men and women, such as most recently the Atlanta police officer shooting of Rayshard Brooks, as he was running away from the officers who approached him in the drive through at a Wendy's Restaurant, to be concerned that the Law Officers Bill of Rights may be providing protections that are not warranted in a democratic society that is based on the rule of law that provides omissions to the rule of law to those who are charged and take an oath to adhere to the law, serve and protect the citizenry of the State and nation as law enforcement peace officers.

THEREFORE, BE IT RESOLVED BY THE WILMINGTON CITY COUNCIL that this Council strongly recommends that the Delaware General Assembly repeal the Delaware Law Enforcement Officers' Bill of Rights in order to establish greater transparency, accountability and trust between Police Officers and Police Departments with All the people in the state of Delaware regardless of race, ethnicity, religion, gender, income and/or prior criminal records in order to have equitable and just police protections for All.

Passed by City Council,

Attest: _____
City Clerk

Synopsis: The Wilmington City Council strongly recommends the Delaware General Assembly to repeal the Delaware Law Enforcement Bill of Rights due to the major issues of lack of transparency, accountability and trust many of its provisions have fostered between law enforcement officers, Police Departments and their fellow citizens due to the actions of some police officers involved in questionable, seemingly racially oriented shootings that according to a WHY Y study from 2005 to the present have taken the lives of 56 people statewide, with nearly half of those lives lost being Black people, as well as, provisions in the LEBOR that prevent access to lawyers representing accused persons of police internal records relevant to files on the arresting officer(s), and lack of public access to reports filed by police officers use of force incidents.