

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 431                      Complaints Against Law Enforcement Officers  
**SPONSOR(S):** Gibson, H.  
**TIED BILLS:** HB 433                      **IDEN./SIM. BILLS:** SB 650

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice (Sub)</u>	<u>6 Y, 0 N</u>	<u>Cole</u>	<u>De La Paz</u>
2) <u>Public Safety &amp; Crime Prevention</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

HB 431 amends current law to make all internal investigations on officers complete the interviews of all identifiable witnesses prior to the officer being interviewed. This allows the officer to have a full and complete accounting of what he or she is being accused of prior to being required to answer questions in an internal investigation. This will also allow agencies to conduct a more thorough investigation prior to interviewing the officer. Nothing in this bill prevents the agency from going back and reinterviewing witnesses after the officer is interviewed or pursuing other witnesses and following up on what the investigators learn during the officer's interview. The bill does remove some of the discretionary authority agency investigators have on when they interview witnesses and the accused officer.

There does not appear to be any fiscal impact to this bill.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

Currently, officers who are the subject of internal investigations are allowed access to the complaint against them and copies of witness statements immediately prior to the investigative interview. The officer's legal counsel or other representative are also allowed access to these statements. Public employees, including law enforcement officers, are currently required to answer questions during an investigative interview by their agency or face discipline. The U.S. Supreme Court case of *Garrity v. State* excludes such compelled information from being considered in a criminal setting.<sup>1</sup> If the officer is facing criminal charges, investigators must notify the officer of that fact and read them their Miranda Warnings. If the officer does not waive his Miranda rights, the Internal Affairs investigators usually cease the administrative interview and allow the criminal case to run its course. If, on the other hand, the officer waives his rights, the internal investigation interview may proceed. It is a common practice, however, to avoid such *Garrity* issues altogether by simply delaying the internal investigative interview pending the outcome of probable criminal prosecution.

HB 431 would require that all identifiable witnesses be interviewed prior to the interview of the accused officer. This change would allow the officer to be made aware of all statements by all identified witnesses before being required to testify in an interview of an internal investigation against him. Nothing in this bill prevents investigators from going back and re-interviewing the officer, any witnesses, or the complainant. This bill does remove some of the discretionary authority of agency investigators on when to interview the accused officer, however.

#### C. SECTION DIRECTORY:

Section 1: Amends S. 112.533 (2)(a) relating to law enforcement officer complaint interviews.

Section 2: Provides an effective date.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None

##### 2. Expenditures:

<sup>1</sup> *Garrity v. New Jersey*, 385 U.S. 493 (1967)

None

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

**D. FISCAL COMMENTS:**

There does not appear to be any fiscal impact to this bill.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

**B. RULE-MAKING AUTHORITY:**

None

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

A strike all amendment was adopted by the Criminal Justice subcommittee that placed the language of the bill into a new subsection of the statute.

A second amendment was adopted by the Criminal Justice subcommittee that added the language, "whenever possible" to the part of the bill requiring all witnesses to be interviewed prior to the investigative interview of the officer. This removes the absolute language that was previously in the bill which would have prevented an officer from ever being interviewed if a known witness was unavailable for whatever reason.