

Governor Wolf Signs Police Reform Measures Into Law:

Police departments should begin to prepare for when the new legal requirements become effective in one year.

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On July 14th Governor Wolf signed into law a police background check bill and a police post-traumatic stress bill. The requirements of both laws become effective next year but municipal police departments should start implementing the requirements of both laws well before the July 14, 2021 deadline.

The background check law, Act 57 of 2020, is designed to make information regarding the employment and separation of police officers more readily available to law enforcement agencies that are hiring police officers. The law requires that the hiring law enforcement agency must conduct a background investigation which at a minimum includes the applicant's "employment information" and "separation records." "Employment information" is defined as "[w]ritten information in connection with job applications, performance evaluations, attendance records, disciplinary actions and eligibility for rehire." The law requires law enforcement agencies which receive a properly-supported request from a prospective employing law enforcement agency to disclose or make available employment information of an applicant. A requesting agency may seek an order from the Commonwealth Court compelling the disclosure if the request is refused.

A request must be (1) in writing, (2) accompanied by an original authorization and release signed by the applicant, and (3) signed by the chief of police or other designated representative of the prospective employing agency. While Act 57 of 2020 provides immunity from civil liability for disclosures made pursuant to a properly-supported request in the absence of fraud or malice, there is no immunity for releases or disclosures made in violation of the law. Further, an applicant who is adversely affected by a release of information in violation of the law may seek declarative and injunctive relief, actual and punitive damages, and expenses including attorney fees, court costs, and compensation for loss of income, where a final determination is made by a court in favor of the applicant adversely affected or where the release of information is rescinded after suit is filed but before disposition by the court.

Act 57 of 2020 also requires law enforcement agencies to maintain, in addition to all other employment information required to be retained by law, "separation records," defined as:

1. Records of the reason or reasons for, and circumstances surrounding, a separation of service for a law enforcement officer on a form developed by the Municipal Police Officers Education and Training Commission ("MPOETC") which will be made available on its website;
2. Records of all criminal charges filed against a law enforcement officer;
3. Records of all civil or ethical complaints made against a law enforcement officer; and

4. Records of the disposition of all charges and complaints, including final and binding disciplinary actions, taken by the law enforcement agency against a law enforcement officer, including opposition of probationary or other conditions related to employment.

Officers are entitled to request a review of separation records, as well as the correction or removal of any information contained within those records with which they disagree. In the event the law enforcement agency does not agree to remove the offending information, the officer will be entitled to place a statement in the separation record stating the basis of the officer's disagreement. This statement must be included with the separation record when such record is disclosed. As to those disclosure requirements, MPOETC has been tasked with creating a database of separation records which will be available to all law enforcement agencies in the Commonwealth. Upon the separation of an officer from employment, a law enforcement agency is required to submit separation records to the database within fifteen (15) days of separation. An applicant for an officer position with a prospective employing law enforcement agency, upon receiving an offer of employment, must submit a signed waiver to the agency allowing the agency to contact MPOETC for the purpose of requesting separation records. MPOETC will then be required to deliver a copy of such records, or a certification that they do not exist, within seven (7) days. Act 57 of 2020 also provides that no law enforcement agency may hire an applicant until a copy of the separation records, or certification that they do not exist, is received.

Agencies that submit separation records to the MPOETC database are entitled to immunity from civil liability for submissions to the database made in good faith, but are not immune where the agency knew the information in the record to be false or misleading, where the separation record had been submitted with a reckless disregard for the truth, or where the submission was specifically prohibited by Federal or State law. Further, the law requires law enforcement agencies to submit a "hiring report" of its reasoning and rationale to MPOETC in the event the agency hires an applicant whose separation records include final and binding disciplinary action based upon excessive force, harassment, theft, discrimination, sexual abuse, sexual misconduct, domestic violence, coercion of a false confession, filing a false report, a judicial finding of dishonesty, or a criminal conviction relating to any of the aforementioned conduct. Unlike the separation records themselves, these "hiring reports" will be subject to disclosure under the Right-to-Know Law. Law enforcement agencies should therefore have strong, well-supported justifications for any decision to hire an applicant with a record of these disciplinary offenses.

Act 59 of 2020 addresses post-traumatic stress requirements for police. Law enforcement agencies are required to provide officers with a mental health evaluation for post-traumatic stress disorders by a licensed mental health professional, at no cost to the officer, in any of the following scenarios: (1) upon the officer's request, (2) upon the recommendation of a police chief or other supervising law enforcement officer; or (3) within thirty (30) days of an incident of the use of lethal force during the course of law enforcement duties.

If the evaluation results in a finding that the officer has symptoms of post-traumatic stress disorder, the officer "shall be provided with treatment under a licensed physician's care until the licensed physician determines in writing that the law enforcement officer is able to resume full duties."

Act 59 of 2020 requires that an officer be assigned to administrative duty – defined as a duty that is designed to limit the officer’s day-to-day work-related interactions with the public – in the event the officer fails to undergo the mental health evaluation when required, or has been determined to be experiencing symptoms of post-traumatic stress disorder as determined by a mental health professional in the initial mental health evaluation.

The substantive provisions of Acts 57 and 59 of 2020 which directly impact Commonwealth police departments will not take effect for one (1) year, but MPOETC will be issuing temporary regulations within eight (8) months which should provide clarity on implementing the requirements of the new laws. However, police departments should familiarize themselves with the new requirements now and begin to formulate plans, policies, and procedures for their implementation. Our attorneys remain available to provide guidance on these new requirements and the forthcoming MPOETC regulations as they are issued and to draft and revise police policies to implement these changes to police hiring requirements, record keeping and reporting of police misconduct and post-traumatic stress exams and treatment for police officers.