



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
CRIMINAL JUSTICE COUNCIL
STATE OFFICE BUILDING – 10th FLOOR
820 N FRENCH STREET
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January 2024

Dear Chief:

On August 7, 2023, Governor Carney signed into law House Bill 205, which amended Title 11, Chapter 92 (formally known as the Law Enforcement Officer Bill of Rights). Among other changes to Chapter 92, HB 205 added requirements that Delaware law enforcement agencies provide certain disclosures to the Criminal Justice Council as outlined in the law and set forth below. First, Section 9210 provides:

§ 9210. Authorized disclosures.

(1) Beginning on August 7, 2023, an investigating agency shall prepare, within 30 days following the completion of a formal investigation and the conclusion of any hearing required by this chapter, a detailed narrative of the investigation, not including any compelled statements of an officer, and forward the detailed narrative to the Criminal Justice Council with regard to any of the following:

- a. Incidents where a law-enforcement officer has discharged a firearm at a person.
- b. A law-enforcement officer's use of force that results in serious physical injury.
- c. An investigation that results in a sustained finding that a law-enforcement officer engaged in a sexual assault or sexual harassment. For purposes of this paragraph, "sexual assault" means the commission or attempted initiation of a sexual act by means of force, threat, coercion, extortion, or offer or implication of leniency or official favor, under the color of authority. Propositioning sex or commission of a sexual act while an officer is on duty is deemed a "sexual assault."
- d. An investigation that results in a sustained finding that a law-enforcement officer engaged in dishonest conduct. This includes, but is not limited to sustained findings of perjury, false statements, filing false reports, witness tampering, and destruction, falsification, or concealment of evidence.
- e. A sustained finding of domestic violence by a law-enforcement officer.

(2) The detailed narratives required by this subsection may not reveal the name or any personal identifying information of a victim or witness. In a domestic violence case where revealing the name of the officer would also allow identification of the victim, the officer's name may be redacted.

(3) The Criminal Justice Council shall post the narratives they receive under this paragraph on their website within 30 calendar days of receipt.

HB 205 defined "detailed narrative" as "a complete description of the facts, steps taken to further an investigation, evidence collected, conclusions reached, the names of officers involved for whom misconduct was substantiated, any discipline assigned in connection with the event, and the employment status of disciplined officers." 11 *Del. C.* § 9200(b)(1).

The CJC has interpreted section 9210 to require detailed narratives for incidents occurring after the effective date of the law, *i.e.*, after August 7, 2023. Therefore, agencies must provide detailed narratives to CJC within 30 days following the completion of a formal investigation and the conclusion of any hearing *pertaining to incidents that occurred after August 7, 2023*. HB 205 requires that CJC post these narratives on its website.

HB 205 also added Section 9211, pertaining to annual reports of certain statistical information, as follows:

§ 9211. Annual reporting and record retention.

- (a) Beginning in 2024, each law-enforcement agency shall annually report to the CJC, and the CJC shall post on its website, all the following information:
- (1) The number of public complaints and internal complaints relating to police misconduct that the department receives each year, broken down by subject matter of the complaint.
 - (2) The number of formal investigations undertaken by the department each year, and the number of complaints resolved without a formal investigation.
 - (3) The number of formal investigations that resulted in a sustained finding of misconduct, an unsubstantiated finding, or any other disposition.¹

The CJC has and will continue to work with the Delaware Police Chiefs Association and the Police Officers Standards and Training Commission (POST) to streamline and to improve the process for the submission of the above-required disclosures. However, in the meantime, your department should submit the detailed narratives required by Section 9210 if it has not yet done so.

¹ Section 9211 also requires that agencies preserve records relating to these incidents for at least 25 years. *See* 11 *Del. C.* § 9211(b).

Thank you for all that do to keep our communities and state safe.

Sincerely,

A handwritten signature in blue ink, appearing to read 'CK', written over the word 'Sincerely,'.

Christian Kervick
Executive Director