

CHAPTER 52D
POLICE DEPARTMENTS

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Note

State law enforcement memorial. L 2011, c 14.
Traffic safety and major accident reporting protocols by each county police department. L 2010, c 104.

Cross References

Emergency use of private real property, see chapter 135.
Forensic identification, see chapter 844D.
Juvenile crime prevention bureau, see §§571-71 to 74.
Peer support counseling; sessions, see §78-52.
Retention of emergency 911 recordings, see §46-1.7.
Safe place for newborns, see chapter 587D.

" **[§52D-1] Police commission.** A police commission is created for each of the counties. The composition, appointment, terms of office, staff, powers, duties, and functions of each police commission shall be prescribed by the charter of each county. [L 1989, c 136, pt of §2]

" **§52D-2 Chief of police.** A chief of police shall be appointed and may be removed as prescribed by the charter of each county. The chief of police shall annually make a report to the police commission on the state of affairs and condition of the police department. [L 1989, c 136, pt of §2; am L 2010, c 92, §2]

" **[§52D-3] Powers and duties of chief of police.** The chief of police shall have the powers and duties as prescribed by law, the respective county charter, and as provided by this chapter. [L 1989, c 136, pt of §2]

" **§52D-3.5 Reports to legislature.** (a) The chief of each county police department shall submit to the legislature no later than January 31 of each year an annual report of misconduct incidents that resulted in suspension or discharge of a police officer. The reporting period of each report shall be from January 1 to December 31 of the year immediately prior to the year of the report submission.

(b) The report shall:

- (1) Summarize the facts and the nature of the misconduct for each incident;
- (2) Specify the disciplinary action imposed for each incident;
- (3) Identify any other incident in the annual report committed by the same police officer; and

- (4) State whether the highest nonjudicial grievance adjustment procedure timely invoked by the police officer or the police officer's representative has concluded:
 - (A) If the highest nonjudicial grievance adjustment procedure has concluded, the report shall state:
 - (i) Whether the incident concerns conduct punishable as a crime, and if so, describe the county police department's findings of fact and conclusions of law concerning the criminal conduct; and
 - (ii) Whether the county police department notified the respective county prosecuting attorney of the incident; or
 - (B) If the highest nonjudicial grievance adjustment procedure has not concluded, the report shall state the current stage of the nonjudicial grievance adjustment procedure as of the end of the reporting period.

(c) The report shall tabulate the number of police officers suspended and discharged under the following categories of the department's Standards of Conduct:

- (1) Malicious use of physical force;
- (2) Mistreatment of prisoners;
- (3) Use of drugs and narcotics; and
- (4) Cowardice.

(d) The summary of facts provided in accordance with subsection (b)(1) shall not be of such a nature so as to disclose the identity of the individuals involved.

(e) For any misconduct incident reported pursuant to this section and subject to subsection (b)(4)(B), the chief of each county police department shall provide updated information in each successive annual report, until the highest nonjudicial grievance adjustment procedure timely invoked by the police officer has concluded. In each successive annual report, the updated information shall reference where the incident appeared in the prior annual report. For any incident resolved without disciplinary action after the conclusion of the nonjudicial grievance adjustment procedure, the chief of each county police department shall summarize the basis for not imposing disciplinary action.

(f) For each misconduct incident reported in an annual report, the chief of each county police department shall retain the disciplinary records in accordance with the department's record retention policy or for at least eighteen months after the final annual report concerning that incident, whichever period is longer. [L 1995, c 242, §3; am L 2014, c 121, §1]

" **[\$52D-4] Ex officio coroner.** Where there is no other county medical examiner, the chief of police or any duly authorized subordinate shall be ex officio county coroner. An ex officio county coroner shall have all the powers and perform all the duties of coroner, within that county, as provided by law. [L 1989, c 136, pt of §2]

" **[\$52D-5] Powers of chief of police outside own county.** The chief of police of each county and any duly authorized subordinates shall have and may exercise all powers, privileges, and authority necessary to enforce the laws of the State, in a county other than the county in and for which the chief has been appointed, if:

- (1) The exercise of such power, privilege, and authority is required in the pursuit of any investigation commenced within the county in and for which the chief has been appointed; and
- (2) The concurrence of the chief of police of the county in which the power, privilege, and authority sought to be exercised is obtained. [L 1989, c 136, pt of §2]

" **[\$52D-6] Police force; employees.** The chief of police may appoint officers and other employees under such rules and at such salaries as are authorized by law. Probationary appointment, suspension, and dismissal of officers and employees of the police department shall be as authorized by law. [L 1989, c 136, pt of §2]

Cross References

Pension systems, see chapter 88, pt III.

" **[\$52D-7] Traffic control surrounding school premises.** (a) The chief of police shall have charge, direction, and control of all matters relating to preserving and protecting the public health, safety, and welfare on and about the streets surrounding any school. To perform this function, the chief of police shall appoint, train, and compensate traffic monitors to perform such duties as the chief directs. Nothing contained in this section shall be construed to diminish the role now performed by the junior police officer program.

(b) The traffic monitors of the respective counties shall be provided with suitable badges or insignia of office, and shall have the duty to assist police officers throughout the State in all matters relating to the enforcement of traffic

regulations on and about the streets surrounding any public school premises.

(c) The term "traffic monitor" means all persons over the age of eighteen who are appointed, trained, and compensated by the chief of police of each county to perform duties under this section whether called traffic monitors or by any other name or title. [L 1989, c 136, pt of §2]

" **[§52D-8] Police officers; counsel for.** Whenever a police officer is prosecuted for a crime or sued in a civil action for acts done in the performance of the officer's duty as a police officer, the police officer shall be represented and defended:

- (1) In criminal proceedings by an attorney to be employed and paid by the county in which the officer is serving; and
- (2) In civil cases by the corporation counsel or county attorney of the county in which the police officer is serving. [L 1989, c 136, pt of §2]

Case Notes

An attorney "employed and paid by the county" for the benefit of a police officer, to defend the officer in a criminal case pursuant to this section and in related civil cases, in which the county has asserted claims adverse to the officer, is not per se, by virtue of such employment and payment, deemed ineffective counsel. 95 H. 9, 18 P.3d 871.

Section provides officers with a constitutionally protected property interest--the right to legal representation for acting within the scope of their duty; due process thus entitles an officer to a contested case hearing under chapter 91 before the officer can be deprived of this interest. 89 H. 221 (App.), 971 P.2d 310.

" **[§52D-9] Determination of scope of duty.** The determination of whether an act, for which the police officer is being prosecuted or sued, was done in the performance of the police officer's duty, so as to entitle the police officer to be represented by counsel provided by the county, shall be made by the police commission of the county. Before making a determination, the police commission shall consult the county attorney or the corporation counsel, who may make a recommendation to the police commission with respect thereto if the county attorney or corporation counsel so desires. The determination of the police commission shall be conclusive for the purpose of this section and section 52D-8. [L 1989, c 136, pt of §2]

Case Notes

Section's reference to "conclusiveness" of the commission's scope of duty determination refers to its "conclusiveness" for purposes of the city's review and does not serve to preclude judicial review; officer may thus appeal an adverse scope of duty determination after a proper contested case hearing has been held pursuant to chapter 91. 89 H. 221 (App.), 971 P.2d 310.

" **§52D-10 Disposition of found, stolen, or unclaimed property.** Each chief of police, on the first Monday in January and the first Monday in July, shall give the county director of finance a sworn statement listing all moneys (except money found), goods, wares, and merchandise in the chief's custody which have been unclaimed for a period of not less than ninety days. At least annually, the chief of police shall give public notice to the public, once a week for four successive weeks in the county (and may also give notice by posting in conspicuous places), that, unless claimed by an owner with satisfactory proof of ownership, the goods, wares, and merchandise listed will be sold at public auction to the highest bidder. On the day and at the place specified in the notice, all property still unclaimed, except money and found property, shall be sold by auction by or under the direction of the chief of police. Any unclaimed goods, wares, or merchandise of a perishable nature or which are unreasonably expensive to keep or safeguard, may be sold at public auction or by any commercially reasonable manner, at a time and after notice that the chief of police deems proper and reasonable under the circumstances. The chief of police, immediately after the sale of any property in accordance with this section, shall pay to the director of finance of the county all moneys remaining unclaimed and all moneys received upon the sale. [L 1989, c 136, pt of §2; am L 1998, c 2, §18]

Cross References

Unclaimed property, see chapter 523A.

" **[§52D-11] Reports by common carriers and court clerks.** All property held by common carriers, subject to section 490:7-308, and by clerks of the court, subject to section 606-4, shall be reported by the common carriers or clerks of the court, in June and December of each year, to the chief of police of the county in which the property is held. [L 1989, c 136, pt of §2]

" **[\$52D-12] Duty of police officer to owner.** Any stolen or lost property in the custody of a police officer shall be delivered to its owner or the owner's duly authorized agent upon satisfactory proof of ownership, and if to an agent, of the agency; subject to payment by the owner or agent of all reasonable expenses incurred in the preservation and safekeeping of the property. [L 1989, c 136, pt of §2]

" **[\$52D-13] Orders of retention.** No property shall be sold or delivered under sections 52D-10 to 52D-14 if the chief of police, any county attorney or corporation counsel, or any court directs that it be retained as evidence. [L 1989, c 136, pt of §2]

" **[\$52D-14] Duty and right of finders.** (a) Except as provided in section 261-17.7, all money or property found shall be reported or delivered by the finder to the chief of police of the county. When so delivered, it shall be held by the chief of police for forty-five days or until claimed by some person who establishes title or right of custody thereto to the satisfaction of the chief of police. If title or right of custody is established, the money or property shall be delivered to the claimant by the chief of police.

(b) If no claim is made or no such right is established within the forty-five days, the money or property shall be returned to the person who delivered it to the chief of police; provided that if the person who delivered it to the chief of police fails to claim the money or property within thirty days after being notified by the chief of police that the person is entitled to possession, the chief of police shall dispose of the money or property in accordance with the procedures established in section 52D-10. For the purpose of this section, notice by regular mail to the person's last known address shall be sufficient. [L 1989, c 136, pt of §2]

" **[\$52D-15] Off-duty police officers; benefits for personal injuries.** For the purposes of chapters 88 and 386, a police officer who is injured, disabled, or killed while actually engaged in the apprehension or attempted apprehension of law violators or suspected law violators, or in the preservation of peace, or in the protection of the rights or property of persons shall be deemed to have been injured, disabled, or killed while in the actual performance of duty, and the injury, disability, or death shall be deemed to have been caused by accident arising out of and in the course of the police officer's employment, notwithstanding that the accident causing the injury, disability, or death occurred at a time, place, or time and

place, not within the police officer's regular tour of duty and notwithstanding that the police officer was not acting under the direction of the police officer's superiors at the time and place of the accident; provided that the accident occurs within the jurisdiction wherein the police officer is commissioned and while the police officer is acting solely as a police officer. [L 1993, c 290, §1]

Cross References

Retirement benefits, see §88-158.

Workers' compensation, see §386-3.

" **[§52D-16] Domestic violence policies; standard of conduct policies.** Each county police department shall post its policies relating to domestic violence, officer-involved domestic violence, and standards of conduct on its official website. [L 2015, c 30, §2]