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STATEMENT OF POLICY AND POSITION

STATE AND LOCAL LAW ENFORCEMENT DISCIPLINE, ACCOUNTABILITY AND DUE PROCESS ACT *“LAW ENFORCEMENT OFFICER BILL OF RIGHTS”*

Most Americans cannot imagine the daily work environment of law enforcement officers; they have, arguably, one of the toughest jobs in the United States. They alone are charged with protecting our neighborhoods and streets from crime. Daily, state and local law enforcement officers are required to make split-second decisions that could mean life or death. In fact, as of June 30, 2008, 59 officers have died in the line of duty this year. An average of 165 officers are killed in the line of duty every year.

However, many officers do not receive basic procedural rights if they become involved in internal police investigations or administrative hearings due to their actions on the job. Sworn law enforcement officers are held to an extremely high standard of personal and professional conduct, due to the enormous responsibilities they exercise. Throughout the country, many states lack coherent guidelines and procedures for law enforcement departments to follow to protect law enforcement officers' due process rights. Because of this, officers are denied the same basic due process rights that all other citizens enjoy. Too often, law enforcement officers are subjected to the whim of their departments or local politics during internal investigations and administrative hearings. In approximately fifty percent of the states, officers enjoy some legal protections against false accusations and abusive conduct. However, this leaves hundreds of thousands of officers who have limited or no due process and who face limitations or retaliation when exercising those and other rights. Many officers can be – and too frequently are – summarily dismissed from their jobs without explanation. This is a death knell for an officer's career. Once an officer's reputation is tarnished by accusation, it is nearly impossible to restore.

Additionally, sometimes individuals, including other officers, are reluctant to file a complaint against an officer, perceiving correctly or incorrectly that management will not take the complaint seriously and conduct an inquiry. Often, departments lack any guidelines and procedures for handling and investigating complaints, thus raising doubts about officer accountability.

For these reasons, NAPO recognizes a serious need for the implementation of standards and procedures to guide both state and local law enforcement agencies and law enforcement officers during internal investigations, administrative hearings, and evaluation of citizen complaints. NAPO also supports the implementation of standards to guide law enforcement agencies in developing and operating a fair and effective investigative process. Individuals – officers and the citizens they serve - should have the right to file a complaint, to have the complaint investigated, and to be informed of its final disposition, including learning the outcome of the investigation and any resulting disciplinary action.

Opponents of the Law Enforcement Officer Bill of Rights argue that it amounts to a federal intervention into state and local law enforcement agencies' management of internal investigations concerning their employees' actions and professional conduct. In no way does the Bill of Rights equal an unwarranted



federal intrusion into state and local departments and agencies. The Bill of Rights would only place into state and local statutes the rights given to law enforcement officers under the United States Constitution, rights that have been upheld by Supreme Court decisions since *Garrity v. New Jersey* in 1967.

In *Garrity v. New Jersey*, the U.S. Supreme Court ruled that testimony coerced from an officer who was threatened with termination if he did not waive his rights constituted a violation of that officer's due process rights. Similar cases have been brought before the Supreme Court, and in every case, the Court upheld the officer's right to due process. The Law Enforcement Officer Bill of Rights would ensure that officers no longer have to rely on the U.S. court system to have their constitutional rights recognized and protected.

Law enforcement officers throughout the United States do not uniformly enjoy the fundamental rights of citizenship or public employment. Too many officers do not have the privilege to act upon their rights as American citizens to fully engage in political activity while off duty. They are not granted the right to full representation or the right to remain silent in connection with an internal affairs investigation. Additionally, they are not granted the right to be advised of the nature of the investigation. Law enforcement officers serve their country by working day in and day out to safeguard our communities. The least the federal government can do is to ensure that every one of these officers is given the basic rights that the citizens they protect enjoy by enacting the Law Enforcement Officer Bill of Rights.

Since 1990, NAPO has actively fought for the enactment of legislation, the "State and Local Law Enforcement Discipline, Accountability, and Due Process Act", that would provide such protections to law enforcement officers. In consultation with attorneys representing law enforcement officers, NAPO has worked tirelessly with Congress and other national interest groups to support this legislation.

If enacted into law, the "State and Local Law Enforcement Discipline, Accountability, and Due Process Act" would provide officers with the following:

- Officers would have the right to engage in civic activity and would not be prohibited from running for elective office because of their profession.
- Departments would have to establish effective procedures for receipt, review, and investigation of law enforcement and other complaints against law enforcement officers.
- If disciplinary action is foreseeable, officers would be notified of the investigation, the nature of the alleged violation, the eventual outcome of the inquiry, and the recommendations made to superiors by the investigators.
- Questioning of a law enforcement officer would be conducted at reasonable times, preferably while the officer is on duty, unless exigent circumstances apply.
- Questioning of the law enforcement officer would take place at the offices of those conducting the investigation or at the place where the officer reports to work, unless the officer consents to another location.
- A single investigator would question officers, and the officer would be informed of the name, rank, and command of the officer conducting the investigation.
- Officers could not be threatened, harassed, or promised rewards to induce the answering of any question.
- Officers under investigation would be entitled to have legal counsel or any other individual of their choice present at the questioning.
- Officers would be entitled to a hearing, notification in advance of the date of the hearing, and access to transcripts and other relevant documents and evidence generated by the hearing. The officer would also be entitled to be represented by legal counsel or another representative at the hearing.
- Officers could obtain declaratory or injunctive relief in state or federal court for violations of this law, including retaliation for the exercise of these or any other rights under federal, state, or local law.



- Officers would have the opportunity to comment in writing on any adverse materials placed in his or her personnel file.
- There would be five 'just cause' factors to be considered by the hearing officer or board for an officer to be found guilty or liable for disciplinary action; and mitigating factors are noted, which could reduce the severity of the disciplinary action.
- This law would only preempt those provisions in state, county, or municipal laws, which provide lesser officer protection, but would not preempt those providing equal or greater protection.