

Motor Vehicle Division Information Memo # 21-29

2021 Legislation – Back the Blue Act

DATE: July 6, 2021

FROM: Kelli Huser, Compliance Officer, MVD

TO: All Bureau of Investigation and Identity staff

SUBJECT

This informational memo explains legislation enacted during the 2021 legislative session which addresses law enforcement initiatives and is informally known as the Back the Blue Act bill. ***Some provisions of the bill were immediately effective, and some provisions became effective on July 1, 2021.***

SUMMARY

Senate File 342 does the following:

- Safe at home: The bill expands the Secretary of State's Safe at Home program eligibility to include assault victims, judicial officers, prosecuting attorneys, peace officers, civilian employees of law enforcement, immediate family members of judicial officers, prosecuting attorneys, and peace officers. The bill also requires county assessors to redact certain program participants' information upon request.
- Confidentiality of communications in a peer support group or group crisis intervention: Under current law, a person cannot testify in a legal proceeding about certain confidential communication. This includes when a peer support group counselor obtains information from an officer receiving counseling. The bill expands confidentiality to group crisis intervention and civilian employees of law enforcement agencies or fire departments.
- Fraudulent filings under the Uniform Commercial Code: The bill creates a statutory process and criminal penalties to address when a person files financing statement records with the intent to harass or defraud a debtor.
- Qualified Immunity for state employees: The bill defines qualified immunity for state employees under the Iowa State Tort Claims Act. All other statutory or common law immunity is also available to the employee. This division of the bill was immediately effective, meaning June 17, 2021.
- Qualified immunity for municipality employees or officers: The bill defines qualified immunity for municipal employees or officers under the Iowa Municipal Tort Claims Act. All other statutory or common law immunity is still available for the employee or officer. This division of the bill was immediately effective upon enactment, meaning June 17, 2021.

- Peace Officer, Public Safety, and Emergency Personnel Bill of Rights:
 - Under current law, an officer shall be notified of the results of a formal administrative investigation. The bill clarifies that an officer shall be immediately notified in writing of the results.
 - Under current law, an officer accused of domestic abuse, sexual abuse, or sexual harassment shall only receive a written summary of the complaint prior to an interview. The bill adds workplace harassment to this list.
 - Under current law, an officer has the right to have legal counsel present during the officer's interview. The bill clarifies it is a right to assistance of legal counsel, and expands that right to include assistance at hearings or other disciplinary or administrative proceedings relating to the complaint.
 - The bill creates a new section that the officer's legal counsel, union representative, or employee representative shall not be subject to investigation, punitive action, or be compelled to disclose in any judicial proceeding any information received from an officer under investigation or from an agent of the officer. However, this section only applies if the officer or agent of the officer is an uninvolved party and not considered a witness to any incident. The officer's legal counsel may coordinate and communicate in confidence with the officer's designated union representative or employee representative. The communication is not subject to discovery in any proceeding.
 - Under current law, the officer may request copies of any witness statements and the investigative agency's report if the investigation results in removal, discharge, or suspension, or other disciplinary action against an officer. The bill allows the officer's legal counsel to request this information and clarifies the complete investigative agency's report shall be provided.
 - Under current law, an officer has the right to pursue civil remedies against a citizen from a false complaint against the officer. The bill creates a right to bring a cause of action against any person, group of persons, organization, or corporation for damages. It also expands the right to include when there is any other violation of this chapter and allows the officer to seek actual damages, court costs, and reasonable attorney fees.
 - Under current law, a municipality, county, or state agency employing an officer shall not publicly release the officer's official photograph without written permission of the officer or a request to release information under Iowa's Open Records Act. The bill identifies additional information that shall be confidential and redacted from any record prior to public release, including the officer's home address, personal telephone number, personal email address, date of birth, social security number, and driver's license number. However, the officer's photograph or unredacted personal information may be released to the officer's legal counsel union representative, or designated employee representative upon the officer's request.
 - The bill provides that an employing agency shall keep certain information confidential unless otherwise provided by law or with the officer's consent. This confidential

information includes an officer's statement, recordings, or transcripts of any interviews or disciplinary proceedings and any complaints made against the officer. However, this information may be released to the officer or officer's legal counsel upon the officer's request.

- The bill requires that an agency employing full-time or part-time officers shall provide training to any officer or supervisor who performs or supervises an investigation under this section, shall maintain documentation of training, and the Iowa law enforcement academy shall adopt minimum training standards.
 - The bill provides that upon written request, an employing agency shall provide a copy of the officer's personnel file and training records to the requesting officer or the officer's legal counsel.
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- Officer disciplinary actions: The bill provides that an officer shall not be discharged, disciplined, or threatened with discharge or discipline by a state, county, or municipal law enforcement agency solely due to a prosecuting attorney deciding or disclosing that exculpatory evidence exists concerning the officer. However, a law enforcement agency may dismiss, suspend, demote, or take other action against the officer based on the underlying actions that resulted in the exculpatory evidence being withheld. This division of the bill is repealed July 1, 2022.

 - Brady-Giglio list: The bill creates a Brady-Giglio list interim committee to study disclosure of information in officer personnel files relates to a Brady-Giglio list, study efficiency of implementing a statewide system for a Brady-Giglio list, and additional procedures for this committee. A report is due to the governor and the legislature no later than December 16, 2021.

 - DPS peace officer and DNR full-time officer health insurance: The bill provides that peace officers employed by the Department of Public Safety that are not covered under a collective bargaining agreement and full-time DNR officers that are not covered under a collective bargaining agreement, but who were at any time eligible to be enrolled in the group health insurance plan shall only be permitted to participate in the group health insurance plan negotiated under chapter 20. DPS peace officers and full-time DNR officers who become managers or supervisors shall not lose group health insurance benefits. This division of the bill was immediately effective and retroactive to January 1, 2021.

 - Workers Compensation: Under current law, amounts paid or payable by the state for disability or death for workers compensation or other similar laws are offset against and payable instead of benefits paid out of the Public Safety Peace Officers' Retirement Accident, and Disability System or the Iowa Public Employee's Retirement System. The bill identifies certain expenses and reimbursements that shall not be offset against or considered payable in lieu of any retirement allowance payable for the same disability.

- Discrimination and discouragement of enforcement of laws: The bill creates a new section that a local entity or law enforcement department shall not adopt, enforce, or take any action or policy where enforcement of state, local, or municipal laws is prohibited or discouraged. A local entity or a person employed by or otherwise under direction or control of a local entity shall not consider race, skin color, language spoken, or national origin while enforcing state, local, and municipal laws except to the extent permitted by the US or Iowa Constitutions. The bill creates a process to file a complaint with the attorney general to allege this violation, and a local entity shall be ineligible to receive any state funds if the local entity intentionally violates this chapter. All state agencies for each state fiscal year shall deny the state funds. The bill also includes a section for how local entities may petition for reinstatement of eligibility to receive state funds. This division of the bill was immediately effective upon enactment, meaning June 17, 2021.
- Authority to carry firearms: A peace officer shall not be prohibited from carrying a firearm while engaged in the performance of official duties. This division of the bill was immediately effective upon enactment, meaning June 17, 2021.
- New or expanded criminal offenses: The bill creates several new crimes, including assaults involving lasers, harassment that occurs against another person who is lawfully in a place of public accommodation, and interference with public disorder control. The bill also expands or modifies several criminal offenses. Under current law, it is a more severe crime to commit assault on persons engaged in certain occupations. The bill adds the occupations of civilian employees of law enforcement agencies and fire departments. The bill expands the crime of criminal mischief in the second degree to include when the acts damaged, defaced, altered, or destroyed any publicly owned property, including a monument or statue. The bill amends the crime of riot to be a class D felony. The bill amends the crime of unlawful assembly to include people who joined a lawful assembly at first but willingly remain about the assembly as it becomes unlawful, and increases the severity of the crime to an aggravated misdemeanor. The bill expands the crime of disorderly conduct. This division of the bill was immediately effective upon enactment, meaning June 17, 2021.
- Eluding offenses under section 321.279: The bill amends Iowa Code section 321.279 to add unmarked law enforcement vehicles and ununiformed law enforcement officers to the section, meaning that a person can be convicted of eluding law enforcement if the visual/audible signal to stop comes from a law enforcement officer who is in an unmarked vehicle and/or who is not in uniform. This division of the bill was immediately effective upon enactment, meaning June 17, 2021.
- Window tinting: The bill exempts persons operating motor vehicles owned or leased by federal, state, or local law enforcement agencies from Iowa's window tinting laws.

- Violations under section 321.366: The bill adds a violation under 321.366 (acts prohibited on fully controlled-access facilities) to prohibit operating a bicycle, skateboard, or other pedestrian conveyance or be a pedestrian anywhere on a fully controlled-access facility. This division of the bill was immediately effective upon enactment, meaning June 17, 2021.
- Civil immunity for drivers – unlawful protest: The bill creates new section 321.366A which provides that a driver is immune from civil liability for injury to another, if the driver injures a person participating in an unlawful protest that is blocking traffic. This division of the bill was immediately effective upon enactment, meaning June 17, 2021.

The legislation is effective July 1, 2021.

LINK TO LEGISLATION

<https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=SF342>

BUSINESS IMPACT

We do not anticipate a significant impact to MVD processes or specifically BIIP processes because of this bill. However, because there are provisions in the bill that relate to peace officer rights and processes, we wanted BIIP staff to be aware.