PEACE OFFICERS BILL OF RIGHTS

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GOVERNMENT CODE - GOV

TITLE 1. GENERAL [100 - 7914]

(Title 1 enacted by Stats. 1943, Ch. 134.)

DIVISION 4. PUBLIC OFFICERS AND EMPLOYEES [1000 - 3599]

(Division 4 enacted by Stats. 1943, Ch. 134.)

CHAPTER 9.7. Public Safety Officers [3300 - 3313]

(Chapter 9.7 added by Stats. 1976, Ch. 465.)

3300.

This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

(Added by Stats. 1976, Ch. 465.)

3301.

For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

(Amended by Stats. 1990, Ch. 675, Sec. 1.)

3302.

(a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) No public safety officer shall be prohibited from seeking election to, or serving as a member of, the governing board of a school district.

(Amended by Stats. 1978, Ch. 1173.)

3303.

When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.
(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.
(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.
(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.
(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.
(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.
(f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:
(1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.
(2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer’s exclusive representative, arising out of a disciplinary action.

(3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.
(4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.
(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.
(h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.
(i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters.
This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.
(j) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.
(Amended by Stats. 1994, Ch. 1259, Sec. 1. Effective January 1, 1995.)

3304.

(a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.
Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If

an officer fails to comply with such an order, the agency may officially charge him or her with insubordination.
(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal.
(c) No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefor and an opportunity for administrative appeal.
For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute "reason or reasons."
Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police.
(d) (1) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed discipline by a Letter of Intent or Notice of Adverse Action articulating the discipline that year, except as provided in paragraph (2). The public agency shall not be required to impose the discipline within that one-year period.
(2) (A) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.
(B) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.
(C) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.
(D) If the investigation involves more than one employee and requires a reasonable extension.
(E) If the investigation involves an employee who is incapacitated or otherwise unavailable.
(F) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.
(G) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.
(H) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.

(e) Where a predisciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter.
(f) If, after investigation and any predisciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline.
(g) Notwithstanding the one-year time period specified in subdivision (d), an investigation may be reopened against a public safety officer if both of the following circumstances exist:
(1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.
(2) One of the following conditions exist:
(A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.
(B) The evidence resulted from the public safety officer's predisciplinary response or procedure.
(h) For those members listed in subdivision (a) of Section 830.2 of the Penal Code, the 30-day time period provided for in subdivision (f) shall not commence with the service of a preliminary notice of adverse action, should the public agency elect to provide the public safety officer with such a notice.
(Amended by Stats. 2009, Ch. 494, Sec. 1. (AB 955) Effective January 1, 2010.)

3304.5.

An administrative appeal instituted by a public safety officer under this chapter shall be conducted in conformance with rules and procedures adopted by the local public agency.
(Added by Stats. 1998, Ch. 263, Sec. 1. Effective January 1, 1999.)

3305.

No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.
(Added by Stats. 1976, Ch. 465.)

3305.5.

(a) A punitive action, or denial of promotion on grounds other than merit, shall not be undertaken by any public agency against any public safety officer solely because

that officer's name has been placed on a Brady list, or that the officer's name may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83.
(b) This section shall not prohibit a public agency from taking punitive action, denying promotion on grounds other than merit, or taking other personnel action against a public safety officer based on the underlying acts or omissions for which that officer's name was placed on a Brady list, or may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83, if the actions taken by the public agency otherwise conform to this chapter and to the rules and procedures adopted by the local agency.
(c) Evidence that a public safety officer's name has been placed on a Brady list, or may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83, shall not be introduced for any purpose in any administrative appeal of a punitive action, except as provided in subdivision (d).
(d) Evidence that a public safety officer's name was placed on a Brady list may only be introduced if, during the administrative appeal of a punitive action against an officer, the underlying act or omission for which that officer's name was placed on a Brady list is proven and the officer is found to be subject to some form of punitive action. If the hearing officer or other administrative appeal tribunal finds or determines that a public safety officer has committed the underlying acts or omissions that will result in a punitive action, denial of a promotion on grounds other than merit, or any other adverse personnel action, and evidence exists that a public safety officer's name has been placed on a Brady list, or may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83, then the evidence shall be introduced for the sole purpose of determining the type or level of punitive action to be imposed.
(e) For purposes of this section, "Brady list" means any system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office in accordance with the holding in Brady v. Maryland (1963) 373 U.S. 83.
(Added by Stats. 2013, Ch. 779, Sec. 1. (SB 313) Effective January 1, 2014.)

3306.

A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.
(Added by Stats. 1976, Ch. 465.)

3306.5.

(a) Every employer shall, at reasonable times and at reasonable intervals, upon the request of a public safety officer, during usual business hours, with no loss of compensation to the officer, permit that officer to inspect personnel files that are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer shall keep each public safety officer's personnel file or a true and correct copy thereof , and shall make the file or copy thereof available within a reasonable period of time after a request therefor by the officer.
(c) If, after examination of the officer's personnel file, the officer believes that any portion of the material is mistakenly or unlawfully placed in the file, the officer may request, in writing, that the mistaken or unlawful portion be corrected or deleted. Any request made pursuant to this subdivision shall include a statement by the officer describing the corrections or deletions from the personnel file requested and the reasons supporting those corrections or deletions. A statement submitted pursuant to this subdivision shall become part of the personnel file of the officer.
(d) Within 30 calendar days of receipt of a request made pursuant to subdivision (c), the employer shall either grant the officer's request or notify the officer of the decision to refuse to grant the request. If the employer refuses to grant the request, in whole or in part, the employer shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the officer.
(Added by Stats. 2000, Ch. 209, Sec. 1. Effective January 1, 2001.)

3307.

(a) No public safety officer shall be compelled to submit to a lie detector test against his or her will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a lie detector test, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take, or did not take, a lie detector test, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take, or was subjected to, a lie detector test.
(b) For the purpose of this section, "lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.
(Amended by Stats. 1998, Ch. 112, Sec. 1. Effective January 1, 1999.)

3307.5.

(a) No public safety officer shall be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.
(b) Based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet as described in subdivision (a) may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. After the notification to cease and desist, the officer, a district

attorney, or a United States Attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or identity as a public safety officer. The court may impose a civil penalty in an amount not to exceed five hundred dollars ($500) per day commencing two working days after the date of receipt of the notification to cease and desist.
(Added by Stats. 1999, Ch. 338, Sec. 1. Effective January 1, 2000.)

3308.

No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.
(Added by Stats. 1976, Ch. 465.)

3309.

No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.
(Added by Stats. 1976, Ch. 465.)

3309.5.

(a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to him or her by this chapter.
(b) Nothing in subdivision (h) of Section 11181 shall be construed to affect the rights and protections afforded to state public safety officers under this chapter or under Section 832.5 of the Penal Code.
(c) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.
(d) (1) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary injunction, or permanent

injunction prohibiting the public safety department from taking any punitive action against the public safety officer.
(2) If the court finds that a bad faith or frivolous action or a filing for an improper purpose has been brought pursuant to this chapter, the court may order sanctions against the party filing the action, the party's attorney, or both, pursuant to Sections 128.6 and 128.7 of the Code of Civil Procedure. Those sanctions may include, but not be limited to, reasonable expenses, including attorney's fees, incurred by a public safety department as the court deems appropriate. Nothing in this paragraph is intended to subject actions or filings under this section to rules or standards that are different from those applicable to other civil actions or filings subject to Section 128.6 or 128.7 of the Code of Civil Procedure.
(e) In addition to the extraordinary relief afforded by this chapter, upon a finding by a superior court that a public safety department, its employees, agents, or assigns, with respect to acts taken within the scope of employment, maliciously violated any provision of this chapter with the intent to injure the public safety officer, the public safety department shall, for each and every violation, be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) to be awarded to the public safety officer whose right or protection was denied and for reasonable attorney's fees as may be determined by the court. If the court so finds, and there is sufficient evidence to establish actual damages suffered by the officer whose right or protection was denied, the public safety department shall also be liable for the amount of the actual damages. Notwithstanding these provisions, a public safety department may not be required to indemnify a contractor for the contractor's liability pursuant to this subdivision if there is, within the contract between the public safety department and the contractor, a "hold harmless" or similar provision that protects the public safety department from liability for the actions of the contractor. An individual shall not be liable for any act for which a public safety department is liable under this section.
(Amended by Stats. 2005, Ch. 22, Sec. 70. Effective January 1, 2006.)

3310.

Any public agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.
(Added by Stats. 1976, Ch. 465.)

3311.

Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.
(Amended by Stats. 1977, Ch. 579.)

3312.

Notwithstanding any other provision of law, the employer of a public safety officer may not take any punitive action against an officer for wearing a pin or displaying any other item containing the American flag, unless the employer gives the officer written notice that includes all of the following:
(a) A statement that the officer's pin or other item violates an existing rule, regulation, policy, or local agency agreement or contract regarding the wearing of a pin, or the displaying of any other item, containing the American flag.
(b) A citation to the specific rule, regulation, policy, or local agency agreement or contract that the pin or other item violates.
(c) A statement that the officer may file an appeal against the employer challenging the alleged violation pursuant to applicable grievance or appeal procedures adopted by the department or public agency that otherwise comply with existing law.
(Added by Stats. 2002, Ch. 170, Sec. 2. Effective January 1, 2003.)

3313.

In the 2005–06 fiscal year, the Commission on State Mandates shall review its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859 and other applicable court decisions. If the Commission on State Mandates revises its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim, the revised decision shall apply to local government Peace Officer Procedural Bill of Rights activities occurring after the date the revised decision is adopted.
(Added by Stats. 2005, Ch. 72, Sec. 6. Effective July 19, 2005.)