**Peace Officers' Bill of Rights**

 **THE RULES OF ENGAGEMENT IN THE INTERNAL INVESTIGATION PROCESS**

**LOOKING OUT FOR YOURSELF IN THE INTERNAL INVESTIGATORY AND DISCIPLINARY SYSTEM**

[**CALIFORNIA PEACE OFFICERS' RIGHTS**](http://www.rcdsa.org/pobrtoc.html#pobr)

[**THE PROCEDURAL BILL OF RIGHTS ACT**](http://www.rcdsa.org/pobrtoc.html#BORA)

* [**3300.**](http://www.rcdsa.org/pobrtoc.html#3300)  The Procedural Bill of Rights Act
* [**3301.**](http://www.rcdsa.org/pobrtoc.html#3301) Definition; Legislative findings and declaration
* [**3302.**](http://www.rcdsa.org/pobrtoc.html#3302) Political activity; membership on school board
* [**3303.**](http://www.rcdsa.org/pobrtoc.html#3303) Investigations and interrogations; conduct; conditions; admissibility of statements; representation; reassignment
* [**3304.**](http://www.rcdsa.org/pobrtoc.html#3304) Lawful exercise of rights; insubordination; administrative appeal; limitation period for investigations; exceptions; effect of pre-disciplinary response or grievance procedures; reopening investigations
* [**3304.5**](http://www.rcdsa.org/pobrtoc.html#33045)**.** Public safety officers; administrative appeals; procedures

* **[3305.](http://www.rcdsa.org/pobrtoc.html%22%20%5Cl%20%223305)** Comments adverse to interest; entry in personnel file or in other record; opportunity to read and sign instrument; refusal to sign
* [**3305.**](http://www.rcdsa.org/pobrtoc.html#3305)**5.** Prohibition against punitive action or denial or promotions because officer’s name placed on “Brady list”
* [**3306.**](http://www.rcdsa.org/pobrtoc.html#3306) Response to adverse comment entered in personnel file; time

* **[3307.](http://www.rcdsa.org/pobrtoc.html%22%20%5Cl%20%223307)** Lie detector test; right to refuse; effect; definition
* [**3307.**](http://www.rcdsa.org/pobrtoc.html#3307)**5.** Photograph or identity; Internet use
* [**3308.**](http://www.rcdsa.org/pobrtoc.html#3308) Financial disclosure; right to refuse; exceptions
* [**3309.**](http://www.rcdsa.org/pobrtoc.html#3309) Search of locker or storage space; consent; search warrant
* [**3309.5**](http://www.rcdsa.org/pobrtoc.html#33095)**.** Public safety officers; applicability of chapter; violations; jurisdictions; liability; remedies and sanctions
* [**3310.**](http://www.rcdsa.org/pobrtoc.html#3310) Procedures of public agency providing same rights or protections; applications of chapter

* **[3311.](http://www.rcdsa.org/pobrtoc.html%22%20%5Cl%20%223311)** Mutual aid agreements; effect of chapter upon
* **3312.** American flag pins or items containing the American flag; prohibition on punitive action against officers for wearing pins or display of items; exception
* **3313.** Commission on State Mandates review

**PEACE OFFICERS' BILL OF RIGHTS
and
THE RULES OF
ENGAGEMENT IN THE INTERNAL
INVESTIGATION PROCESS**

***as set forth in***

***California Government Code §§3300 et seq.***

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**LOOKING OUT FOR YOURSELF**

**IN THE INTERNAL INVESTIGATORY**

**AND DISCIPLINARY SYSTEM**

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*"Defending Those Who Protect Others"*

**INTRODUCTION**

The rights you have as a California peace officer were established after years of effort by many who wanted to see that law enforcement officers in this State would be free from abusive, arbitrary and unfair treatment by overzealous or politically motivated officials in internal discipline matters. You will not benefit from these protections unless you exercise the rights provided for you. Many of the rights in the Bill of Rights Act pertain to "interrogations" which "could lead to punitive action". Anytime you find yourself in this predicament, immediately demand to consult with a knowledgeable representative, before you answer any questions. Always take the time to contact the Riverside Sheriff's Association Legal Defense Trust (RSA/LDT) for assistance and information. You owe it to yourself.

I wrote these rules many years ago and they have been modified over time as changes in the law have occurred. The advice herein comes from thirty-two years with law enforcement, twenty of them devoted almost exclusively to defending men and women in our profession. Please take them seriously.

 *Michael P. Stone, Esq.
Pasadena, CA*

**LOOKING OUT FOR YOURSELF IN THE
INTERNAL INVESTIGATORY AND DISCIPLINARY SYSTEM**

If you assume that you should approach an internal affairs interview with your guard down and appear at the appointed time without a competent representative, you are embarking upon a perilous journey full of unseen and unappreciated risks and hazards. Let's all be clear on one point: *any* internal affairs interrogation is an *adversary* procedure. Internal affairs interrogators are conducting an investigation which is designed to determine what acts or omissions occurred, and whether that conduct deserves discipline, or in some cases, criminal prosecution consideration. Surely if you are the accused, you will recognize that you are in *jeopardy* and that the preliminary I.A. interrogation is a "critical stage" of the proceedings, warranting appropriate preparation, vigorous representation, and the utmost caution. What if you are deemed to be only a "witness" and you are being interviewed from that perspective? Have you anything to worry about? Absolutely you do, and the same precautions should be applied as though you are the accused. Remember, although you might not be a "principal" in the act of misconduct, you will likely be subject to discipline if you might be said to have "acquiesced" in another's misconduct, or if you "failed to take appropriate action" (including reporting) upon learning of the probable misconduct of another.

**Rule No. 1:***Do not try to predict the course of the interrogation nor the scope of the investigation. Obtain the aid of a competent representative or lawyer in advance. Call the RSA/LDT at 951-653-0130, at once.*

You should remember that an interview (interrogation) is always tape recorded. Any utterance you might make in the course of the interrogation will be difficult to change or retreat from later. Any statement of fact you might make could form the basis of a charge of "false and misleading" if sufficient contrary evidence is developed by the investigators. Moreover, you may be subjected to orders or other directives to do this or that, or refrain from doing this or that. Do not take this on alone, and do not assume that internal affairs procedures and orders are proper or appropriate just because the investigators are from Internal Affairs or are your divisional supervisors. Tape record all conversations between you and investigators, with a plainly visible recorder. Discuss your interview in advance with your Legal Defense Trust representative and listen carefully to his or her instructions.

**Rule No. 2:***Tape record all investigative interrogations. Obtain and consult with your RSA/LDT representative.*

*Government Code §3303* specifies the minimal protections which must be afforded you when you are subjected to an administrative interrogation. This is part of the Public Safety Officers' Procedural Bill of Rights Act (§§3300-3313). Read these sections yourself. They are set forth verbatim in this booklet. Remember that the protections apply whenever you are subjected to interrogation which *could*lead to punitive action. The interrogation must be *reasonable*as to scheduling and length. If you are off-duty at the time, you are entitled to compensation. You are entitled to an *explanation*of the nature of the investigation before any questioning. If you don't understand what it is all about, do not proceed with the questioning until you do understand. The Department is not allowed to question you through more than two investigators at a given time. You have the right to reasonable breaks for consultation and physical needs. You may not be threatened, although you may be told, in appropriate cases, that failure to cooperate may result in punitive action.

**Rule No. 3:***Make sure you understand what the focus and scope of the investigation are and whether you are suspected of any misconduct, and finally, whether whatever you are going to say in response to questioning will disclose misconduct. Discuss all of this thoroughly with your representative beforehand.*

If you are interrogated at a second or subsequent time, you have the right to review your prior statements (tape recordings) made by investigators before further questioning. Review these with your representative. Section 3303(g) states that you may be entitled to disclosure (beforehand) of non-confidential investigative materials (notes, reports, statements and complaints) prior to interrogation and the opportunity to familiarize yourself with such things, but you have to ask for them. You should demand all of these materials up front, on the tape. Only those materials which are "truly confidential" should be withheld from you. When an item is declared confidential and therefore withheld, it should be because disclosure will endanger someone, lead to the destruction of evidence, frustrate successful completion of the investigation, or identify a truly confidential informant. We do not believe that a mere desire of investigators to be "one up" on you during the interrogation is an appropriate reason to withhold documents. Put simply, investigators must be able to articulate some reasonable, good-faith premise for withholding materials other than an abstract desire to keep you in the dark or limit your maneuvering room.

**Rule No. 4:***Demand all notes, reports, statements and complaints made by any person. If the investigators insist on withholding anything, have them describe what is being withheld with sufficient particularity that it may be identified at a later time. Have them state the specific reason or basis for the claim of confidentiality. Also, demand on the record that all investigators' notes be retained until final disposition of the case. In appropriate cases, inquire if you have been tape recorded, photographed or filmed without your knowledge, or whether you have been subjected to surveillance. Put this on the record.*

Section 3303(h) entitles you to an advisement of constitutional rights if it is deemed that you may be charged with a criminal offense. If you are so advised, invoke your rights. You may still be required to answer, but your answers deserve protection from introduction into any potential criminal action against you. Never proceed with an interrogation under such circumstances until you have had an adequate opportunity to discuss your case fully with your representative. It may be prudent for you to talk to a lawyer.

**Rule No. 5:***If there is a potential for a criminal accusation, invoke your constitutional rights at once and follow the advice of your representative. Remember that you cannot disclose CRIMINAL misconduct to a representative who is also an employee, and expect that it will remain confidential between you. He is arguably under a duty to report such things. In this situation, it may be advisable to at least discuss your matter with a lawyer or an RSA/LDT field representative where you have absolute confidentiality. Do not complete any reports or statements or answer any questions without being ordered or compelled to do so.*

In disciplinary investigations, the initial interrogation is positively a critical stage of the proceedings. You should never walk into such a setting without representation. Obviously, there are fact situations too numerous to cover here which may present themselves in a given investigation. Your representative or lawyer will likely have faced them before and you owe it to yourself to get some help. If you need representation, call RSA/LDT at once.

We all recognize that a smooth functioning sheriff's department depends in large measure on discipline and vigorous personnel investigation. On the other hand, state law, constitutional principles and your MOU contain many protections for you in the disciplinary process. Failure to take advantage of these and the assistance that is available is inviting trouble.

At times, you may be contacted by internal affairs investigators when you are off-duty, at home, without any prior warning. There are very few interviews which must go forward immediately. If you are taken by surprise, *do not proceed without representation.*If you are contacted by investigators at your home, and they want to take you from your home, you should immediately call a representative or a lawyer. You should make it clear that if you do leave your home and accompany investigators to a police facility or elsewhere, you are cooperating only because you fear discipline for insubordination. In other words, make sure it is clear that you are being *compelled* to leave your home. You must take the initiative to get legal help. If you do not ask for a representative, they will not give you the opportunity to obtain one.

**Rule No. 6:***If investigators desire to remove you from your home, demand to talk to a representative before you are required to leave, and demand to know the basis for such an exigency. Do not proceed with an interview until you are adequately represented.*

The willful refusal to obey an order from a supervisor is insubordination. It is generally a firing offense. If you are given an order, even one which seems wrong, ill-advised or even patently illegal, you should still obey if you safely can do so, being careful to make a record as soon as possible of your circumstances. Insubordination is very difficult to cure. On the other hand, there are remedies for a supervisor's illegal order.

**Rule No. 7:***Obey all orders that are even only arguably legal -- do not invite a charge of insubordination, if it can be avoided in any reasonable way.*

Investigators have the right, in investigations which are specifically, narrowly and directly related to an official interest, to give you an order to answer questions. If the answers may, in any way incriminate you, you have the right to object to answering on Fifth Amendment grounds. When you do, they will normally tell you (1) you are ordered to answer -- failure to do so is insubordination; (2) anything you say in answer cannot be used against you in a criminal proceeding. Once this occurs, you have use immunity for your statements.

**Rule No. 8:***If your answers to questions may tend to incriminate you, assert your Fifth Amendment rights (silence and counsel) and call RSA/LDT immediately.*

Sometimes when you are involved in an on-duty incident, and you have bonafide self-incrimination concerns, because your account may constitute admissions or statements against your criminal interests, you may be directed to write a report or a memo regarding your actions. These pose the same dangers present when you are questioned about your involvement, because written reports and memos may be used against you in a criminal prosecution unless they are the product of compulsion.

In any case where you are under threat or apprehension of criminal investigation or prosecution and you are told to write an account of your relevant activities, you need to invoke your right against self-incrimination, and secure an order under pain of insubordination to complete the required document. Do not be insubordinate, but, document the circumstances, your invocation of the right to silence, and the direct order, in a side memo to your supervisor, so it is clear that your completion of the required report or memo was preceded by your assertion of the right to silence, but that your invocation of your rights was overridden by a direct order. If these facts are made clear in a record, you will be in a position to claim immunity from the use of your written statement if there is a criminal prosecution taken against you. If you are permitted opportunity to do it, seek legal counsel before completing any reports in these circumstances. *However, do not invoke this procedure lightly, or frivolously.*

**Rule No. 9:***In proper circumstances, invoke your right to silence if you are directed to complete any written accounts of your actions. Secure a direct order to complete the report or memo and then document the facts in a separate memo to your supervisor. Get legal advice if you can.*

**The Procedural Bill of Rights Act**
(as amended, effective January 1, 2014)

3300. The Procedural Bill of Rights Act

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

3301. Definition; Legislative findings and declaration

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 such 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.

3302. Political activity; membership on school board

(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.

3303. Investigations and interrogations; conduct; conditions; admissibility of statements; representation; reassignment

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 purposes 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 such 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 which 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 non-criminal 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.

3304. Punitive action for lawful exercise of rights; insubordination; administrative appeal; removal of chief of police; limitation period for investigations; pre-disciplinary response or grievance procedures; notice of intended discipline; reopening investigations

(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 requeued to impose the discipline within that one-year time 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 wavier.

(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 pre-disciplinary 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 pre-disciplinary 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 pre-disciplinary 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.

3304.5. Public safety officers; administrative appeals; procedures

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.

3305. Comments adverse to interest; entry in personnel file or in other record; opportunity to read and sign instrument; refusal to sign

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.

3305.5. Prohibition against punitive action or denial or promotions because officer’s name placed on “*Brady* list”

(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.

3306. Response to adverse comment entered in personnel file; time

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.

3307. Lie detector test; right to refuse; effect; definition

(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.

3307.5. Photograph or identity; Internet use

(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.

3308. Financial disclosure; right to refuse; exceptions

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.

3309. Search of locker or storage space; consent; search warrant

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.

3309.5. Public safety officers; applicability of chapter; violations; jurisdictions; liability; remedies and sanctions

(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.

3310. Procedures of public agency providing same rights or protections; applications of chapter

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.

3311. Mutual aid agreements; effect of chapter upon

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.

3312.  American flag pins or items containing the American flag; prohibition on punitive action against officers for wearing pins or display of items; exception

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.

3313.  Commission on State Mandates review

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. \*

*\*The Commission on State Mandates’ statement of decision adopted on April 26, 2006 clarified whether certain activities mandated by POBRA are reimbursable. The decision did not effect any rights of a peace officer under the act.*

**PEACE OFFICERS' BILL OF RIGHTS**

1. I have the right to be presumed innocent until proven guilty.
2. I have the right to remain silent.
3. I have the right to know of, all and specific, charges against me.
4. I have the right to be free of self-incrimination.
5. I have the right to be treated fairly and equitably.
6. I have the right to be treated with dignity nor shall I be subjected to cruel and unusual punishment.
7. I have the right to be free of gender discrimination.
8. I have the right to be charged under the same quantum of proof as any citizen and the burden of proof is on my department.
9. I have the right to my privacy off-duty and in my home.
10. I have the right to know of, and confront those who will witness against me.
11. I have the right to be free of harassment, pressure, threats and intimidation, however subtle or veiled.
12. I have the right to be free of verbal, emotional, sexual, and situational abuse.
13. I have the right to be free of ostracism and disparate treatment.
14. I have the right to vigorously defend myself.
15. I have the right to have an attorney, representative or union advocate present at any hearing and before making any statement.
16. I have the right to submit and have considered evidence in my favor and subpoena or summon witnesses.
17. I have the right to equal access to my personnel file and immediate discovery of any and all evidence against me, except that which is confidential under law.
18. I have the right to know of, and have access to "Division Only" files and secret "Drop Files".
19. I have the right to be free of unreasonable searches and seizures.
20. I have the right to continued wages and official status, pending a finding at a hearing on any alleged breach or offense, I shall not be stripped of my office.
21. I have the right to challenge the bias, prejudice, incompetence or bad faith of my accusers.
22. I have the right to be free of punitive, retributive, and meaningless assignments pending the outcome of charges or a hearing.
23. I have the right to a full, fair and impartial administrative hearing by persons of judicial stature and training, or to be tried in a civil or criminal court before being suspended without pay or terminated.
24. I have the right to have my spiritual advisor present so I need not stand alone.
25. I have the right to work in the job that I am trained in and qualified to do.
26. I have the right to appeal any finding and I do not waive that right.
27. I have the right to elect retirement or limited duty if I am disabled in the line of duty.