

**Introduced by Senator Lieu**

February 20, 2013

---

An act to amend Section 3303 of the Government Code, relating to public safety officers.

LEGISLATIVE COUNSEL'S DIGEST

SB 388, as introduced, Lieu. Public safety officers: investigations and interrogations.

The Public Safety Officers Procedural Bill of Rights Act grants certain rights to public safety officers, as defined. The act requires that, 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 be conducted under certain conditions, except as specified.

This bill would provide that the above-mentioned conditions apply when any interrogation of a public safety officer is conducted, whether or not an investigation of that public safety officer is being conducted.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 3303 of the Government Code is amended
- 2 to read:
- 3 3303. When any public safety officer is under investigation
- 4 ~~and subjected to interrogation~~ *and subjected to interrogation, or*
- 5 *is subject to interrogation without being under investigation, by*
- 6 ~~his or her commanding officer, or any other member~~ *representative*

1 of the employing public safety department, that could lead to  
2 punitive action, the interrogation shall be conducted under the  
3 following conditions. For the purpose of this chapter, punitive  
4 action means any action that may lead to dismissal, demotion,  
5 suspension, reduction in salary, written reprimand, or transfer for  
6 purposes of punishment.

7 (a) The interrogation shall be conducted at a reasonable hour,  
8 preferably at a time when the public safety officer is on duty, or  
9 during the normal waking hours for the public safety officer, unless  
10 the seriousness of the ~~investigation~~ *inquiry* requires otherwise. If  
11 the interrogation does occur during off-duty time of the public  
12 safety officer being interrogated, the public safety officer shall be  
13 compensated for any off-duty time in accordance with regular  
14 department procedures, and the public safety officer shall not be  
15 released from employment for any work missed.

16 (b) The public safety officer ~~under investigation~~ shall be  
17 informed prior to the interrogation of the rank, name, and command  
18 of the officer in charge of the interrogation, the interrogating  
19 officers, and all other persons to be present during the interrogation.  
20 All questions directed to the public safety officer under  
21 interrogation shall be asked by and through no more than two  
22 interrogators at one time.

23 (c) The public safety officer ~~under investigation~~ shall be  
24 informed of the nature of the ~~investigation~~ *inquiry* prior to any  
25 interrogation.

26 (d) The interrogating session shall be for a reasonable period  
27 taking into consideration gravity and complexity of the issue being  
28 investigated. The person under interrogation shall be allowed to  
29 attend to his or her own personal physical necessities.

30 (e) The public safety officer under interrogation shall not be  
31 subjected to offensive language or threatened with punitive action,  
32 except that an officer refusing to respond to questions or submit  
33 to interrogations shall be informed that failure to answer questions  
34 directly related to the ~~investigation~~ *inquiry* or interrogation may  
35 result in punitive action. No promise of reward shall be made as  
36 an inducement to answering any question. The employer shall not  
37 cause the public safety officer under interrogation to be subjected  
38 to visits by the press or news media without his or her express  
39 consent nor shall his or her home address or photograph be given  
40 to the press or news media without his or her express consent.

1 (f) No statement made during interrogation by a public safety  
2 officer under duress, coercion, or threat of punitive action shall be  
3 admissible in any subsequent civil proceeding. This subdivision  
4 is subject to the following qualifications:

5 (1) This subdivision shall not limit the use of statements made  
6 by a public safety officer when the employing public safety  
7 department is seeking civil sanctions against any public safety  
8 officer, including disciplinary action brought under Section 19572.

9 (2) This subdivision shall not prevent the admissibility of  
10 statements made by the public safety officer under interrogation  
11 in any civil action, including administrative actions, brought by  
12 that public safety officer, or that officer's exclusive representative,  
13 arising out of a disciplinary action.

14 (3) This subdivision shall not prevent statements made by a  
15 public safety officer under interrogation from being used to  
16 impeach the testimony of that officer after an in camera review to  
17 determine whether the statements serve to impeach the testimony  
18 of the officer.

19 (4) This subdivision shall not otherwise prevent the admissibility  
20 of statements made by a public safety officer under interrogation  
21 if that officer subsequently is deceased.

22 (g) The complete interrogation of a public safety officer may  
23 be recorded. If a tape recording is made of the interrogation, the  
24 public safety officer shall have access to the tape if any further  
25 proceedings are contemplated or prior to any further interrogation  
26 at a subsequent time. The public safety officer shall be entitled to  
27 a transcribed copy of any notes made by a stenographer or to any  
28 reports or complaints made by investigators or other persons,  
29 except those which are deemed by the investigating agency to be  
30 confidential. No notes or reports that are deemed to be confidential  
31 may be entered in the officer's personnel file. The public safety  
32 officer being interrogated shall have the right to bring his or her  
33 own recording device and record any and all aspects of the  
34 interrogation.

35 (h) If prior to or during the interrogation of a public safety  
36 officer it is deemed that he or she may be charged with a criminal  
37 offense, he or she shall be immediately informed of his or her  
38 constitutional rights.

39 (i) Upon the filing of a formal written statement of charges, or  
40 whenever an interrogation *under any circumstances* focuses on

1 matters that ~~are likely to result in~~ *could lead to* punitive action  
2 against any public safety officer, that officer, at his or her request,  
3 shall have the right to be represented by a representative of his or  
4 her choice who may be present at all times during the interrogation.  
5 The representative shall not be a person subject to the same  
6 ~~investigation~~ *inquiry*. The representative shall not be required to  
7 disclose, nor be subject to any punitive action for refusing to  
8 disclose, any information received from the officer ~~under~~  
9 ~~investigation~~ *being interrogated* for noncriminal matters.

10 This section shall not apply to any interrogation of a public safety  
11 officer in the normal course of duty, counseling, instruction, or  
12 informal verbal admonishment by, or other routine or unplanned  
13 contact with, a supervisor or any other public safety officer, nor  
14 shall this section apply to an ~~investigation~~ *inquiry* concerned solely  
15 and directly with alleged criminal activities.

16 (j) No public safety officer shall be loaned or temporarily  
17 reassigned to a location or duty assignment if a sworn member of  
18 his or her department would not normally be sent to that location  
19 or would not normally be given that duty assignment under similar  
20 circumstances.