

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 388

Introduced by Senator Lieu

February 20, 2013

An act to amend ~~Section~~ *Sections 3253 and 3303* of the Government Code, relating to ~~public safety officers~~: *public employment*.

LEGISLATIVE COUNSEL'S DIGEST

SB 388, as amended, Lieu. Public safety officers *and firefighters*: investigations and interrogations.

The Public Safety Officers Procedural Bill of Rights Act ~~grants and the Firefighters Procedural Bill of Rights Act grant~~ certain rights to public safety officers *and firefighters*, as defined. ~~The act requires acts require~~ that, when any public safety officer *or firefighter* is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department *or fire 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 *or firefighter* is conducted, whether or not an investigation of that public safety officer *or firefighter* is being conducted.

By adding to the duties of local agencies to comply with the Firefighters Procedural Bill of Rights Act, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 3253 of the Government Code is amended
 2 to read:
 3 3253. When any firefighter is under investigation and subjected
 4 to interrogation, *or subjected to interrogation without being under*
 5 *investigation*, by his or her commanding officer, or any other
 6 ~~member~~ representative designated by the employing department
 7 or licensing or certifying agency, that could lead to punitive action,
 8 the interrogation shall be conducted under the following conditions:
 9 (a) The interrogation shall be conducted at a reasonable hour,
 10 at a time when the firefighter is on duty, unless an imminent threat
 11 to the safety of the public requires otherwise. If the interrogation
 12 does occur during off-duty time of the firefighter being
 13 interrogated, the firefighter shall be compensated for any off-duty
 14 time in accordance with regular department procedures. The
 15 firefighter’s compensation shall not be reduced as a result of any
 16 work missed while being interrogated.
 17 (b) The firefighter ~~under investigation~~ shall be informed, prior
 18 to the interrogation, of the rank, name, and command of the officer
 19 or other person in charge of the interrogation, the interrogating
 20 officer, and all other persons to be present during the interrogation.
 21 All questions directed to the firefighter under interrogation shall
 22 be asked by and through no more than two interrogators at one
 23 time.
 24 (c) The firefighter ~~under investigation~~ shall be informed of the
 25 nature of the ~~investigation~~ *inquiry* prior to any interrogation.
 26 (d) The interrogating session shall be for a reasonable period
 27 taking into consideration the gravity and complexity of the issue
 28 being investigated. The person under interrogation shall be allowed
 29 reasonable breaks to attend to his or her own personal physical
 30 necessities.

1 (e) (1) The firefighter under interrogation shall not be subjected
2 to offensive language or threatened with punitive action. A promise
3 of reward shall not be made as an inducement to answering any
4 question. The employer shall provide to, and obtain from, an
5 employee a formal grant of immunity from criminal prosecution,
6 in writing, before the employee may be compelled to respond to
7 incriminating questions in an interrogation. Subject to that grant
8 of immunity, a firefighter refusing to respond to questions or
9 submit to interrogations shall be informed that the failure to answer
10 questions directly related to the ~~investigation~~ *inquiry* or
11 interrogation may result in punitive action.

12 (2) The employer shall not cause the firefighter under
13 interrogation to be subjected to visits by the press or news media
14 without his or her express written consent free of duress, and the
15 firefighter's photograph, home address, telephone number, or other
16 contact information shall not be given to the press or news media
17 without his or her express written consent.

18 (f) A statement made during interrogation by a firefighter under
19 duress, coercion, or threat of punitive action shall not be admissible
20 in any subsequent judicial proceeding, subject to the following
21 qualifications:

22 (1) This subdivision shall not limit the use of statements
23 otherwise made by a firefighter when the employing fire
24 department is seeking civil service sanctions against any firefighter,
25 including disciplinary action brought under Section 19572.

26 (2) This subdivision shall not prevent the admissibility of
27 statements otherwise made by the firefighter under interrogation
28 in any civil action, including administrative actions, brought by
29 that firefighter, or that firefighter's exclusive representative, arising
30 out of a disciplinary action.

31 (g) The complete interrogation of a firefighter may be recorded.
32 If a recording is made of the interrogation, the firefighter shall
33 have access to the recording if any further proceedings are
34 contemplated or prior to any further interrogation at a subsequent
35 time. The firefighter shall be entitled to a transcribed copy of any
36 notes made by a stenographer or to any reports or complaints made
37 by investigators or other persons, except those portions that are
38 otherwise required by law to be kept confidential. Notes or reports
39 that are deemed to be confidential shall not be entered in the
40 firefighter's personnel file. The firefighter being interrogated shall

1 have the right to bring his or her own recording device and record
2 any and all aspects of the interrogation.

3 (h) If, prior to or during the interrogation of a firefighter, it is
4 contemplated that he or she may be charged with a criminal
5 offense, he or she shall be immediately informed of his or her
6 constitutional rights.

7 (i) Upon the filing of a formal written statement of charges, or
8 whenever an interrogation *under any circumstances* focuses on
9 matters that may result in punitive action against any firefighter,
10 that firefighter, at his or her request, shall have the right to be
11 represented by a representative of his or her choice who may be
12 present at all times during the interrogation. The representative
13 shall not be a person subject to the same ~~investigation~~ *inquiry*. The
14 representative shall not be required to disclose, or be subject to
15 any punitive action for refusing to disclose, any information
16 received from the firefighter ~~under investigation~~ *being investigated*
17 *or interrogated* for noncriminal matters.

18 This section shall not be construed to apply to counseling,
19 instruction, or informal verbal admonishment by, or other routine
20 or unplanned contact with, a supervisor or any other firefighter.

21 (j) A firefighter shall not be loaned or temporarily reassigned
22 to a location or duty assignment if a firefighter in his or her
23 department would not normally be sent to that location or would
24 not normally be given that duty assignment under similar
25 circumstances.

26 **SECTION 1.**

27 *SEC. 2.* Section 3303 of the Government Code is amended to
28 read:

29 3303. When any public safety officer is under investigation
30 and subjected to interrogation, or is subject to interrogation without
31 being under investigation, by his or her commanding officer, or
32 any other representative of the employing public safety department
33 *or its designee*, that could lead to punitive action, the interrogation
34 shall be conducted under the following conditions. For the purpose
35 of this chapter, punitive action means any action that may lead to
36 dismissal, demotion, suspension, reduction in salary, written
37 reprimand, or transfer for purposes of punishment.

38 (a) The interrogation shall be conducted at a reasonable hour,
39 preferably at a time when the public safety officer is on duty, or
40 during the normal waking hours for the public safety officer, unless

1 the seriousness of the inquiry requires otherwise. If the
2 interrogation does occur during off-duty time of the public safety
3 officer being interrogated, the public safety officer shall be
4 compensated for any off-duty time in accordance with regular
5 department procedures, and the public safety officer shall not be
6 released from employment for any work missed.

7 (b) The public safety officer shall be informed prior to the
8 interrogation of the rank, name, and command of the officer in
9 charge of the interrogation, the interrogating officers, and all other
10 persons to be present during the interrogation. All questions
11 directed to the public safety officer under interrogation shall be
12 asked by and through no more than two interrogators at one time.

13 (c) The public safety officer shall be informed of the nature of
14 the inquiry prior to any interrogation.

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

19 (e) The public safety officer under interrogation shall not be
20 subjected to offensive language or threatened with punitive action,
21 except that an officer refusing to respond to questions or submit
22 to interrogations shall be informed that failure to answer questions
23 directly related to the inquiry or interrogation may result in punitive
24 action. No promise of reward shall be made as an inducement to
25 answering any question. The employer shall not cause the public
26 safety officer under interrogation to be subjected to visits by the
27 press or news media without his or her express consent nor shall
28 his or her home address or photograph be given to the press or
29 news media without his or her express consent.

30 (f) ~~No~~A statement made during interrogation by a public safety
31 officer under duress, coercion, or threat of punitive action shall
32 *not* be admissible in any subsequent civil proceeding. This
33 subdivision is subject to the following qualifications:

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

38 (2) This subdivision shall not prevent the admissibility of
39 statements made by the public safety officer under interrogation
40 in any civil action, including administrative actions, brought by

1 that public safety officer, or that officer's exclusive representative,
2 arising out of a disciplinary action.

3 (3) This subdivision shall not prevent statements made by a
4 public safety officer under interrogation from being used to
5 impeach the testimony of that officer after an in camera review to
6 determine whether the statements serve to impeach the testimony
7 of the officer.

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

11 (g) The complete interrogation of a public safety officer may
12 be recorded. If a tape recording is made of the interrogation, the
13 public safety officer shall have access to the tape if any further
14 proceedings are contemplated or prior to any further interrogation
15 at a subsequent time. The public safety officer shall be entitled to
16 a transcribed copy of any notes made by a stenographer or to any
17 reports or complaints made by investigators or other persons,
18 except those which are deemed by the investigating agency to be
19 confidential. No notes or reports that are deemed to be confidential
20 may be entered in the officer's personnel file. The public safety
21 officer being interrogated shall have the right to bring his or her
22 own recording device and record any and all aspects of the
23 interrogation.

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

28 (i) Upon the filing of a formal written statement of charges, or
29 whenever an interrogation under any circumstances focuses on
30 matters that could lead to punitive action against any public safety
31 officer, that officer, at his or her request, shall have the right to be
32 represented by a representative of his or her choice who may be
33 present at all times during the interrogation. The representative
34 shall not be a person subject to the same inquiry. The representative
35 shall not be required to disclose, nor be subject to any punitive
36 action for refusing to disclose, any information received from the
37 officer being *investigated or* interrogated for noncriminal matters.

38 This section shall not apply to any interrogation of a public safety
39 officer in the normal course of duty, counseling, instruction, or
40 informal verbal admonishment by, or other routine or unplanned

1 contact with, a supervisor or any other public safety officer, nor
2 shall this section apply to an inquiry concerned solely and directly
3 with alleged criminal activities.

4 (j) No public safety officer shall be loaned or temporarily
5 reassigned to a location or duty assignment if a sworn member of
6 his or her department would not normally be sent to that location
7 or would not normally be given that duty assignment under similar
8 circumstances.

9 *SEC. 3. If the Commission on State Mandates determines that*
10 *this act contains costs mandated by the state, reimbursement to*
11 *local agencies and school districts for those costs shall be made*
12 *pursuant to Part 7 (commencing with Section 17500) of Division*
13 *4 of Title 2 of the Government Code.*