

AMENDED IN SENATE JANUARY 6, 2014

AMENDED IN SENATE APRIL 18, 2013

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 388

Introduced by Senator Lieu

February 20, 2013

An act to amend Sections 3253 and 3303 of the Government Code, relating to 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 and the Firefighters Procedural Bill of Rights Act grant certain rights to public safety officers and firefighters, as defined. The 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~~ *if an interrogation focuses on matters that may result in punitive action against a public safety officer or firefighter who is not formally under investigation, but is interviewed regarding the investigation of another public safety officer or firefighter,*

the public safety officer or firefighter being interviewed is entitled to representation, as specified.

~~This bill would also state the intent of the Legislature that this measure not be construed to alter specified provisions limiting the right of a public safety officer or firefighter to be represented by a representative of his or her choice.~~

By adding to the duties of local agencies to comply with the Public Safety Officers Procedural Bill of Rights Act and 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: yes.
State-mandated local program: yes.

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

1 ~~SECTION 1. It is the intent of the Legislature that this measure~~
2 ~~not be construed to alter any limitations on the rights of~~
3 ~~representation contained in subdivision (i) of Section 3253 of the~~
4 ~~Government Code or subdivision (i) of Section 3303 of the~~
5 ~~Government Code.~~

6 ~~SEC. 2. Section 3253 of the Government Code is amended to~~
7 ~~read:~~

8 ~~3253. When any firefighter is under investigation and subjected~~
9 ~~to interrogation, or subjected to interrogation without being under~~
10 ~~investigation, by his or her commanding officer, or any other~~
11 ~~representative designated by the employing department or licensing~~
12 ~~or certifying agency, that could lead to punitive action, the~~
13 ~~interrogation shall be conducted under the following conditions:~~

14 ~~(a) The interrogation shall be conducted at a reasonable hour,~~
15 ~~at a time when the firefighter is on duty, unless an imminent threat~~
16 ~~to the safety of the public requires otherwise. If the interrogation~~
17 ~~does occur during off-duty time of the firefighter being~~
18 ~~interrogated, the firefighter shall be compensated for any off-duty~~

1 time in accordance with regular department procedures. The
2 firefighter's compensation shall not be reduced as a result of any
3 work missed while being interrogated.

4 (b) The firefighter shall be informed, prior to the interrogation,
5 of the rank, name, and command of the officer or other person in
6 charge of the interrogation, the interrogating officer, and all other
7 persons to be present during the interrogation. All questions
8 directed to the firefighter under interrogation shall be asked by
9 and through no more than two interrogators at one time.

10 (c) The firefighter shall be informed of the nature of the inquiry
11 prior to any interrogation.

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

17 (e) (1) The firefighter under interrogation shall not be subjected
18 to offensive language or threatened with punitive action. A promise
19 of reward shall not be made as an inducement to answering any
20 question. The employer shall provide to, and obtain from, an
21 employee a formal grant of immunity from criminal prosecution,
22 in writing, before the employee may be compelled to respond to
23 incriminating questions in an interrogation. Subject to that grant
24 of immunity, a firefighter refusing to respond to questions or
25 submit to interrogations shall be informed that the failure to answer
26 questions directly related to the inquiry or interrogation may result
27 in punitive action.

28 (2) The employer shall not cause the firefighter under
29 interrogation to be subjected to visits by the press or news media
30 without his or her express written consent free of duress, and the
31 firefighter's photograph, home address, telephone number, or other
32 contact information shall not be given to the press or news media
33 without his or her express written consent.

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

38 (1) This subdivision shall not limit the use of statements
39 otherwise made by a firefighter when the employing fire

1 department is seeking civil service sanctions against any firefighter,
2 including disciplinary action brought under Section 19572.

3 ~~(2) This subdivision shall not prevent the admissibility of~~
4 ~~statements otherwise made by the firefighter under interrogation~~
5 ~~in any civil action, including administrative actions, brought by~~
6 ~~that firefighter, or that firefighter's exclusive representative, arising~~
7 ~~out of a disciplinary action.~~

8 ~~(g) The complete interrogation of a firefighter may be recorded.~~
9 ~~If a recording is made of the interrogation, the firefighter shall~~
10 ~~have access to the recording if any further proceedings are~~
11 ~~contemplated or prior to any further interrogation at a subsequent~~
12 ~~time. The firefighter shall be entitled to a transcribed copy of any~~
13 ~~notes made by a stenographer or to any reports or complaints made~~
14 ~~by investigators or other persons, except those portions that are~~
15 ~~otherwise required by law to be kept confidential. Notes or reports~~
16 ~~that are deemed to be confidential shall not be entered in the~~
17 ~~firefighter's personnel file. The firefighter being interrogated shall~~
18 ~~have the right to bring his or her own recording device and record~~
19 ~~any and all aspects of the interrogation.~~

20 ~~(h) If, prior to or during the interrogation of a firefighter, it is~~
21 ~~contemplated that he or she may be charged with a criminal~~
22 ~~offense, he or she shall be immediately informed of his or her~~
23 ~~constitutional rights.~~

24 ~~(i) Upon the filing of a formal written statement of charges, or~~
25 ~~whenever an interrogation under any circumstances focuses on~~
26 ~~matters that may result in punitive action against any firefighter,~~
27 ~~that firefighter, at his or her request, shall have the right to be~~
28 ~~represented by a representative of his or her choice who may be~~
29 ~~present at all times during the interrogation. The representative~~
30 ~~shall not be a person subject to the same inquiry. The representative~~
31 ~~shall not be required to disclose, or be subject to any punitive~~
32 ~~action for refusing to disclose, any information received from the~~
33 ~~firefighter being investigated or interrogated for noncriminal~~
34 ~~matters.~~

35 ~~This section shall not be construed to apply to counseling,~~
36 ~~instruction, or informal verbal admonishment by, or other routine~~
37 ~~or unplanned contact with, a supervisor or any other firefighter.~~

38 ~~(j) A firefighter shall not be loaned or temporarily reassigned~~
39 ~~to a location or duty assignment if a firefighter in his or her~~
40 ~~department would not normally be sent to that location or would~~

1 ~~not normally be given that duty assignment under similar~~
2 ~~circumstances.~~

3 *SECTION 1. Section 3253 of the Government Code is amended*
4 *to read:*

5 3253. When any firefighter is under investigation and subjected
6 to interrogation by his or her commanding officer, or any other
7 member designated by the employing department or licensing or
8 certifying agency, that could lead to punitive action, the
9 interrogation shall be conducted under the following conditions:

10 (a) The interrogation shall be conducted at a reasonable hour,
11 at a time when the firefighter is on duty, unless an imminent threat
12 to the safety of the public requires otherwise. If the interrogation
13 does occur during off-duty time of the firefighter being
14 interrogated, the firefighter shall be compensated for any off-duty
15 time in accordance with regular department procedures. The
16 firefighter's compensation shall not be reduced as a result of any
17 work missed while being interrogated.

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

25 (c) The firefighter under investigation shall be informed of the
26 nature of the investigation prior to any interrogation.

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

32 (e) (1) The firefighter under interrogation shall not be subjected
33 to offensive language or threatened with punitive action. A promise
34 of reward shall not be made as an inducement to answering any
35 question. The employer shall provide to, and obtain from, an
36 employee a formal grant of immunity from criminal prosecution,
37 in writing, before the employee may be compelled to respond to
38 incriminating questions in an interrogation. Subject to that grant
39 of immunity, a firefighter refusing to respond to questions or
40 submit to interrogations shall be informed that the failure to answer

1 questions directly related to the investigation or interrogation may
2 result in punitive action.

3 (2) The employer shall not cause the firefighter under
4 interrogation to be subjected to visits by the press or news media
5 without his or her express written consent free of duress, and the
6 firefighter's photograph, home address, telephone number, or other
7 contact information shall not be given to the press or news media
8 without his or her express written consent.

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

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

17 (2) This subdivision shall not prevent the admissibility of
18 statements otherwise made by the firefighter under interrogation
19 in any civil action, including administrative actions, brought by
20 that firefighter, or that firefighter's exclusive representative, arising
21 out of a disciplinary action.

22 (g) The complete interrogation of a firefighter may be recorded.
23 If a recording is made of the interrogation, the firefighter shall
24 have access to the recording if any further proceedings are
25 contemplated or prior to any further interrogation at a subsequent
26 time. The firefighter shall be entitled to a transcribed copy of any
27 notes made by a stenographer or to any reports or complaints made
28 by investigators or other persons, except those portions that are
29 otherwise required by law to be kept confidential. Notes or reports
30 that are deemed to be confidential shall not be entered in the
31 firefighter's personnel file. The firefighter being interrogated shall
32 have the right to bring his or her own recording device and record
33 any and all aspects of the interrogation.

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

38 (i) (1) Upon the filing of a formal written statement of charges,
39 or whenever an interrogation focuses on matters that may result
40 in punitive action against any firefighter, that firefighter, at his or

1 her request, shall have the right to be represented by a
 2 representative of his or her choice who may be present at all times
 3 during the interrogation. The representative shall not be a person
 4 subject to the same investigation. The representative shall not be
 5 required to disclose, or be subject to any punitive action for
 6 refusing to disclose, any information received from the firefighter
 7 under investigation for noncriminal matters.

8 *(2) If an interrogation focuses on matters that may result in*
 9 *punitive action against a firefighter who is not formally under*
 10 *investigation but is interviewed regarding the investigation of*
 11 *another firefighter, the firefighter being interviewed shall have*
 12 *the right to be represented by a representative of his or her choice.*
 13 *The representative may be present at all times during the*
 14 *interrogation or interview. The representative shall not be a person*
 15 *subject to the same investigation. The representative shall not be*
 16 *required to disclose, or be subject to punitive action for refusing*
 17 *to disclose, any information received from the firefighter being*
 18 *interrogated as part of the investigation for noncriminal matters.*

19 **This**

20 (3) This section shall not be construed to apply to counseling,
 21 instruction, or informal verbal admonishment by, or other routine
 22 or unplanned contact with, a supervisor or any other firefighter.

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

28 ~~SEC. 3. Section 3303 of the Government Code is amended to~~
 29 ~~read:~~

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

39 ~~(a) The interrogation shall be conducted at a reasonable hour,~~
 40 ~~preferably at a time when the public safety officer is on duty, or~~

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

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

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

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

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

31 (f) A statement made during interrogation by a public safety
32 officer under duress, coercion, or threat of punitive action shall
33 not be admissible in any subsequent civil proceeding. This
34 subdivision is subject to the following qualifications:

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

39 (2) This subdivision shall not prevent the admissibility of
40 statements made by the public safety officer under interrogation

1 in any civil action, including administrative actions, brought by
2 that public safety officer, or that officer's exclusive representative,
3 arising out of a disciplinary action.

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

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

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

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

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

39 This section shall not apply to any interrogation of a public safety
40 officer in the normal course of duty, counseling, instruction, or

1 ~~informal verbal admonishment by, or other routine or unplanned~~
2 ~~contact with, a supervisor or any other public safety officer, nor~~
3 ~~shall this section apply to an inquiry concerned solely and directly~~
4 ~~with alleged criminal activities.~~

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

10 *SEC. 2. Section 3303 of the Government Code is amended to*
11 *read:*

12 3303. When any public safety officer is under investigation
13 and subjected to interrogation by his or her commanding officer,
14 or any other member of the employing public safety department,
15 that could lead to punitive action, the interrogation shall be
16 conducted under the following conditions. For the purpose of this
17 chapter, punitive action means any action that may lead to
18 dismissal, demotion, suspension, reduction in salary, written
19 reprimand, or transfer for purposes of punishment.

20 (a) The interrogation shall be conducted at a reasonable hour,
21 preferably at a time when the public safety officer is on duty, or
22 during the normal waking hours for the public safety officer, unless
23 the seriousness of the investigation requires otherwise. If the
24 interrogation does occur during off-duty time of the public safety
25 officer being interrogated, the public safety officer shall be
26 compensated for any off-duty time in accordance with regular
27 department procedures, and the public safety officer shall not be
28 released from employment for any work missed.

29 (b) The public safety officer under investigation shall be
30 informed prior to the interrogation of the rank, name, and command
31 of the officer in charge of the interrogation, the interrogating
32 officers, and all other persons to be present during the interrogation.
33 All questions directed to the public safety officer under
34 interrogation shall be asked by and through no more than two
35 interrogators at one time.

36 (c) The public safety officer under investigation shall be
37 informed of the nature of the investigation prior to any
38 interrogation.

39 (d) The interrogating session shall be for a reasonable period
40 taking into consideration gravity and complexity of the issue being

1 investigated. The person under interrogation shall be allowed to
2 attend to his or her own personal physical necessities.

3 (e) The public safety officer under interrogation shall not be
4 subjected to offensive language or threatened with punitive action,
5 except that an officer refusing to respond to questions or submit
6 to interrogations shall be informed that failure to answer questions
7 directly related to the investigation or interrogation may result in
8 punitive action. No promise of reward shall be made as an
9 inducement to answering any question. The employer shall not
10 cause the public safety officer under interrogation to be subjected
11 to visits by the press or news media without his or her express
12 consent nor shall his or her home address or photograph be given
13 to the press or news media without his or her express consent.

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

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

22 (2) This subdivision shall not prevent the admissibility of
23 statements made by the public safety officer under interrogation
24 in any civil action, including administrative actions, brought by
25 that public safety officer, or that officer's exclusive representative,
26 arising out of a disciplinary action.

27 (3) This subdivision shall not prevent statements made by a
28 public safety officer under interrogation from being used to
29 impeach the testimony of that officer after an in camera review to
30 determine whether the statements serve to impeach the testimony
31 of the officer.

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

35 (g) The complete interrogation of a public safety officer may
36 be recorded. If a tape recording is made of the interrogation, the
37 public safety officer shall have access to the tape if any further
38 proceedings are contemplated or prior to any further interrogation
39 at a subsequent time. The public safety officer shall be entitled to
40 a transcribed copy of any notes made by a stenographer or to any

1 reports or complaints made by investigators or other persons,
2 except those which are deemed by the investigating agency to be
3 confidential. No notes or reports that are deemed to be confidential
4 may be entered in the officer's personnel file. The public safety
5 officer being interrogated shall have the right to bring his or her
6 own recording device and record any and all aspects of the
7 interrogation.

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

12 (i) (1) Upon the filing of a formal written statement of charges,
13 or whenever an interrogation focuses on matters that are likely to
14 result in punitive action against any public safety officer, that
15 officer, at his or her request, shall have the right to be represented
16 by a representative of his or her choice who may be present at all
17 times during the interrogation. The representative shall not be a
18 person subject to the same investigation. The representative shall
19 not be required to disclose, nor be subject to any punitive action
20 for refusing to disclose, any information received from the officer
21 under investigation for noncriminal matters.

22 (2) *If an interrogation focuses on matters that may result in*
23 *punitive action against a public safety officer who is not formally*
24 *under investigation but is interviewed regarding the investigation*
25 *of another public safety officer, the public safety officer being*
26 *interviewed shall have the right to be represented by a*
27 *representative of his or her choice. The representative may be*
28 *present at all times during the interrogation or interview. The*
29 *representative shall not be a person subject to the same*
30 *investigation. The representative shall not be required to disclose,*
31 *or be subject to punitive action for refusing to disclose, any*
32 *information received from the public safety officer being*
33 *interrogated as part of the investigation for noncriminal matters.*

34 ~~This~~

35 (3) *This section shall not apply to any interrogation of a public*
36 *safety officer in the normal course of duty, counseling, instruction,*
37 *or informal verbal admonishment by, or other routine or unplanned*
38 *contact with, a supervisor or any other public safety officer, nor*
39 *shall this section apply to an investigation concerned solely and*
40 *directly with alleged criminal activities.*

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

6 ~~SEC. 4.~~

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

O