

**Senate Bill No. 388**

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Passed the Senate January 30, 2014

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*Secretary of the Senate*

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Passed the Assembly August 25, 2014

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2014, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Sections 3253 and 3303 of the Government Code, relating to public employment.

## LEGISLATIVE COUNSEL'S DIGEST

SB 388, 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 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.

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.

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

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

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

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

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

(c) The firefighter 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 the gravity and complexity of the issue being investigated. The person under interrogation shall be allowed reasonable breaks to attend to his or her own personal physical necessities.

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

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

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

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

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

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

(g) The complete interrogation of a firefighter may be recorded. If a recording is made of the interrogation, the firefighter shall have access to the recording if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The firefighter 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 portions that are otherwise required by law to be kept confidential. Notes or reports that are deemed to be confidential shall not be entered in the firefighter's personnel file. The firefighter 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 firefighter, it is contemplated 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) (1) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that may result in punitive action against any firefighter, that firefighter, 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, or be subject to any punitive action for refusing to disclose, any information received from the firefighter under investigation for noncriminal matters.

(2) If an interrogation focuses on matters that may result in punitive action against a firefighter who is not formally under investigation but is interviewed regarding the investigation of another firefighter, the firefighter being interviewed shall have the right to be represented by a representative of his or her choice. The firefighter may choose a representative who is reasonably available to represent the firefighter at an interrogation that has been reasonably scheduled. The representative may be present at all times during the interrogation or interview. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, or be subject to punitive action for refusing to disclose, any information received from the firefighter being interrogated as part of the investigation for noncriminal matters.

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

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

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

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

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

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

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

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

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

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

(1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety

department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.

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

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

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

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

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

(i) (1) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action

for refusing to disclose, any information received from the officer under investigation for noncriminal matters.

(2) If an interrogation focuses on matters that are likely to result in punitive action against a public safety officer who is not formally under investigation but is interviewed regarding the investigation of another public safety officer, the public safety officer being interviewed shall have the right to be represented by a representative of his or her choice. The public safety officer may choose a representative who is reasonably available to represent the officer at an interrogation that has been reasonably scheduled. The representative may be present at all times during the interrogation or interview. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, or be subject to punitive action for refusing to disclose, any information received from the public safety officer being interrogated as part of the investigation for noncriminal matters.

(3) 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.

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

















Approved \_\_\_\_\_, 2014

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*Governor*