

By Mr. Thompson of Cambridge, petition of Alvin E. Thompson and another for legislation to establish a law enforcement bill of rights. Public Service.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Five.

AN ACT ESTABLISHING A LAW ENFORCEMENT BILL OF RIGHTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The Massachusetts General Laws are hereby
2 amended by inserting after chapter 31A, the following new
3 chapter: —

CHAPTER 31B.

4
5 Section 1 (a). For the purposes of this chapter, "Law enforce-
6 ment officer" shall be defined as a sworn member of: The
7 Massachusetts State police, any municipal police force, the police
8 department or force of any region or county, the Office of the
9 Sheriff of any County, any state or county correctional facility,
10 any special law enforcement unit pursuant to chapter 22C.

1 SECTION 2. When any public safety officer is under investiga-
2 tion and subjected to interrogation by his commanding officer, or
3 any other member of the employing public safety department,
4 which could lead to punitive action, such interrogation shall be
5 conducted under the following conditions. For the purpose of this
6 chapter, punitive action is defined as any action which may lead to
7 dismissal, demotion, suspension, reduction in salary, written reprimand,
8 or transfer for purposes of punishment.

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

11 during the normal waking hours for the public safety officer,
12 unless the seriousness of the investigation requires otherwise. If
13 such interrogation does occur during off-duty time of the public
14 safety officer being interrogated, the public safety officer shall be
15 compensated for such off-duty time in accordance with regular
16 department procedures, and the public safety officer shall not be
17 released from employment for any work missed.

18 (b) The public safety officer under investigation shall be
19 informed prior to such interrogation of the rank, name and com-
20 mand of the officer in charge of the interrogation, the interroga-
21 ting officers, and all other persons to be present during the interro-
22 gation. All questions directed to the public safety officer under
23 interrogation shall be asked by and through no more than two
24 interrogators at one time.

25 (c) The public safety officer under investigation shall be
26 informed of the nature of the investigation prior to any interroga-
27 tion.

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

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

43 (f) The complete interrogation of a public safety officer may be
44 recorded. If a tape recording is made of the interrogation, the pub-
45 lic safety officer shall have access to the tape if any further pro-
46 ceedings are contemplated or prior to any further interrogation at
47 a subsequent time. The public safety officer shall be entitled to a
48 transcribed copy of any notes made by a stenographer or to any
49 reports or complaints made by investigators or other persons,

50 except those which are deemed by the investigating agency to be
51 confidential. No notes or reports which are deemed to be confi-
52 dential may be entered in the officer's personnel file. The public
53 safety officer being interrogated shall have the right to bring his
54 own recording device and record any and all aspects of the inter-
55 rogation.

56 (g) If prior to or during the interrogation of a public safety offi-
57 cer it is deemed that he may be charged with a criminal offense,
58 he shall be immediately informed of his constitutional rights.

59 (h) Upon the filing of a formal written statement of charges, or
60 whenever an interrogation focuses on matters which are likely to
61 result in punitive action against any public safety officer, that offi-
62 cer, at his request, shall have the right to be represented by a rep-
63 resentative of his choice who may be present at all times during
64 such interrogation. The representative shall not be a person sub-
65 ject to the same investigation. The representative shall not be
66 required to disclose, nor be subject to any punitive action for
67 refusing to disclose, any information received from the officer
68 under investigation for noncriminal matters.

69 This section shall not apply to any interrogation of a public
70 safety officer in the normal course of duty, counseling, instruc-
71 tion, or informal verbal admonishment by, or other routine or
72 unplanned contact with, a supervisor or any other public safety
73 officer, nor shall this section apply to an investigation concerned
74 solely and directly with alleged criminal activities.

75 (i) No public safety officer shall be loaned or temporarily reas-
76 signed to a location or duty assignment if a sworn member of his
77 department would not normally be sent to that location or would
78 not normally be given that duty assignment under similar circum-
79 stances.

80 (j) Upon completion of the investigation, the law enforcement
81 officer shall be notified of the name of any witness and all charges
82 and specifications against the officer not less than 10 days prior to
83 any hearing.

84 (k) In addition, the law enforcement officer under investigation
85 shall be furnished with a copy of the investigatory file and any
86 exculpatory information, but excluding:

- 87 1. The identity of confidential sources;
- 88 2. Any nonexculpatory information; and

89 3. Recommendations as to charges, disposition, or punishment.

90 (l) The law enforcement officer under investigation shall be
91 furnished with a copy of the investigatory file and the exculpatory
92 information described under subparagraph (iii) of this paragraph
93 not less than 10 days before any hearing if the officer and the offi-
94 cer's representative agree:

95 1. To execute a confidentiality agreement with the law enforce-
96 ment agency to not disclose any of the material contained in the
97 record for any purpose other than to defend the officer; and

98 2. To pay any reasonable charge for the cost of reproducing the
99 material involved.

100 (m) The law enforcement officer under interrogation may not
101 be threatened with transfer, dismissal, or disciplinary action.

102 (n) Unless otherwise required or conducted on a routine basis,
103 no law enforcement officer shall be required to submit to blood
104 alcohol tests, blood, breath, or urine tests for controlled sub-
105 stances, polygraph examinations or interrogations which specifi-
106 cally relate to the subject of the investigation. The results of any
107 such test are not admissible or discoverable in any criminal or
108 civil proceeding against the law enforcement officer, when said
109 officer has been ordered to submit thereto.

110 (o) If the chief is the law enforcement officer under investiga-
111 tion, the chief of another law enforcement agency in this State
112 shall function as the law enforcement officer of the same rank on
113 the hearing board.

114 1. If the chief of a State law enforcement agency is under inves-
115 tigation, the Governor shall appoint the chief of another law
116 enforcement agency as the law enforcement officer of the same
117 rank on the hearing board.

118 2. If the chief of a county or municipal law enforcement agency
119 is under investigation, the official who may appoint the chief's
120 successor shall appoint the chief of another law enforcement
121 agency as the officer of the same rank on the hearing board.

122 3. If the chief of a State law enforcement agency or the chief of
123 a county or municipal law enforcement agency is under investiga-
124 tion, the official who may appoint the chief's successor, or that
125 official's designee, shall function as chief for the purposes of this
126 subtitle.

1 SECTION 3. (a) No evidence may be obtained, received or
2 admitted into evidence in any proceeding of any disciplinary
3 action which violates any of the rights established by the United
4 States Constitution or Constitution or by this chapter. The tribunal
5 may not enter any judgment or sustain any disciplinary action
6 based on any evidence obtained in violation of the officer's rights
7 as contained in this chapter.

8 (b) Any decision, order or action taken following the hearing
9 shall be in writing and shall be accompanied by findings of fact.
10 The findings shall consist of a concise statement upon each issue
11 in the case. A copy of the decision or order accompanying find-
12 ings and conclusions along with the written action and right of
13 appeal, if any, shall be delivered or mailed promptly to the law-
14 enforcement officer or to his or her attorney or representative of
15 record.

1 SECTION 4. No law-enforcement officer shall be compelled to
2 work extra duty without compensation as a penalty for a discipli-
3 nary infraction. No suspension for any period of time provided in
4 departmental rules and regulations shall affect the law-enforce-
5 ment officer's eligibility for pension, hospitalization, medical and
6 life insurance coverage or other benefits specifically protected
7 under his or her contract of employment. Suspension may affect
8 time of pension eligibility by contractual provision or other statu-
9 tory provision. Nothing herein shall prevent any law-enforcement
10 agency from requiring reimbursement by a suspended law-
11 enforcement officer of his or her employee contribution to his or
12 her benefits during his or her time of suspension.

1 SECTION 5. No public safety officer shall be required or
2 requested for purposes of job assignment or other personnel action
3 to disclose any item of his property, income, assets, source of
4 income, debts or personal or domestic expenditures (including
5 those of any member of his family or household) unless such infor-
6 mation is obtained or required under state law or proper legal pro-
7 cedure, tends to indicate a conflict of interest with respect to the
8 performance of his official duties, or is necessary for the employ-
9 ing agency to ascertain the desirability of assigning the public
10 safety officer to a specialized unit in which there is a strong possi-
11 bility that bribes or other improper inducements may be offered.

1 SECTION 6. No public safety officer shall have his locker, or
2 other space for storage that may be assigned to him searched
3 except in his presence, or with his consent, or unless a valid
4 search warrant has been obtained or where he has been notified
5 that a search will be conducted. This section shall apply only to
6 lockers or other space for storage that are owned or leased by the
7 employing agency.

1 SECTION 7. (c) Evidence which possesses probative value
2 commonly accepted by reasonable and prudent persons in the con-
3 duct of their affairs shall be admissible in evidence and given pro-
4 bative effect. The tribunal conducting the hearing shall give effect
5 to the rules of privilege recognized by law and exclude incompe-
6 tent, irrelevant, immaterial and unduly repetitious evidence. All
7 records and documents which any party desires to use shall be
8 offered and made a part of the record. Documentary evidence may
9 be received in the form of copies of excerpts or by incorporation
10 by reference.

11 (d) Every party shall have the right of cross-examination of wit-
12 nesses who testify and may submit rebuttal evidence.

13 (e) The tribunal may take notice of judicially cognizable facts
14 and in addition may take notice of general, technical or scientific
15 facts within its specialized knowledge. Parties shall be notified
16 beforehand of the materials so noticed by the trial board. No law-
17 enforcement officer may be adjudged guilty of any offense unless
18 the hearing tribunal is satisfied that guilt has been established by
19 substantial evidence.

1 SECTION 8. A law enforcement agency may not prohibit sec-
2 ondary employment but may promulgate reasonable regulations as
3 to a law enforcement officer's secondary employment.

1 SECTION 9. The rights established by the provisions of this
2 chapter shall not be diminished or abridged by any local ordinance
3 or collective bargaining agreement.

