

HOUSE No. 2418

The Commonwealth of Massachusetts

PRESENTED BY:

John P. Fresolo

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to establishing a law enforcement bill of rights.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
John P. Fresolo	16th Worcester
Todd M. Smola	1st Hampden
David Holway	National Association of Government Employees 159 Burgin Parkway Quincy, MA 02169

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2528 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO 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 31B.**

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

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

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

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

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

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

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

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

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

40 (h) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters which
41 are likely to result in punitive action against any public safety officer, that officer, at his request, shall have the right
42 to be represented by a representative of his choice who may be present at all times during such interrogation. The
43 representative shall not be a person subject to the same investigation. The representative shall not be required to
44 disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer
45 under investigation for noncriminal matters. This section shall not apply to any interrogation of a public safety
46 officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or
47 unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an
48 investigation concerned solely and directly with alleged criminal activities.

49 (i) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn
50 member of his department would not normally be sent to that location or would not normally be given that duty
51 assignment under similar circumstances.

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

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

- 56 1. The identity of confidential sources;
- 57 2. Any nonexculpatory information; and
- 58 3. Recommendations as to charges, disposition, or punishment.

59 (1) The law enforcement officer under investigation shall be furnished with a copy of the investigatory file and the
60 exculpatory information described under subparagraph (iii) of this paragraph not less than 10 days before any
61 hearing if the officer and the officer's representative agree:

62 1. To execute a confidentiality agreement with the law enforcement agency to not disclose any of the material
63 contained in the record for any purpose other than to defend the officer; and

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

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

67 (n) Unless otherwise required or conducted on a routine basis, no law enforcement officer shall be required to
68 submit to blood alcohol tests, blood, breath, or urine tests for controlled substances, polygraph examinations or
69 interrogations which specifically relate to the subject of the investigation. The results of any such test are not
70 admissible or discoverable in any criminal or civil proceeding against the law enforcement officer, when said officer
71 has been ordered to submit thereto.

72 (o) If the chief is the law enforcement officer under investigation, the chief of another law enforcement agency in
73 this State shall function as the law enforcement officer of the same rank on the hearing board.

74 1. If the chief of a State law enforcement agency is under investigation, the Governor shall appoint the chief of
75 another law enforcement agency as the law enforcement officer of the same rank on the hearing board.

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

79 3. If the chief of a State law enforcement agency or the chief of a county or municipal law enforcement agency is
80 under investigation, the official who may appoint the chief's successor, or that official's designee, shall function as
81 chief for the purposes of this subtitle.

82 Section 3. (a) No evidence may be obtained, received or admitted into evidence in any proceeding of any
83 disciplinary action which violates any of the rights established by the United States Constitution or Constitution or
84 by this chapter. The tribunal may not enter any judgment or sustain any disciplinary action based on any evidence
85 obtained in violation of the officer's rights as contained in this chapter.

86 (b) Any decision, order or action taken following the hearing shall be in writing and shall be accompanied by
87 findings of fact. The findings shall consist of a concise statement upon each issue in the case. A copy of the decision
88 or order accompanying findings and conclusions along with the written action and right of appeal, if any, shall be
89 delivered or mailed promptly to the law enforcement officer or to his or her attorney or representative of record.

90 Section 4. No law enforcement officer shall be compelled to work extra duty without compensation as a penalty for
91 a disciplinary infraction. No suspension for any period of time provided in departmental rules and regulations shall
92 affect the law enforcement officer's eligibility for pension, hospitalization, medical and life insurance coverage or
93 other benefits specifically protected under his or her contract of employment. Suspension may affect time of pension
94 eligibility by contractual provision or other statutory provision. Nothing herein shall prevent any law enforcement
95 agency from requiring reimbursement by a suspended law enforcement officer of his or her employee contribution
96 to his or her benefits during his or her time of suspension.

97 Section 5. No public safety officer shall be required or requested for purposes of job assignment or other personnel
98 action to disclose any item of his property, income, assets, source of income, debts or personal or domestic
99 expenditures (including those of any member of his family or household) unless such information is obtained or
100 required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the
101 performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning
102 the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper
103 inducements may be offered.

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

108 Section 7. (c) Evidence which possesses probative value commonly accepted by reasonable and prudent persons in
109 the conduct of their affairs shall be admissible in evidence and given probative effect. The tribunal conducting the
110 hearing shall give effect to the rules of privilege recognized by law and exclude incompetent, irrelevant, immaterial
111 and unduly repetitious evidence. All records and documents which any party desires to use shall be offered and
112 made a part of the record. Documentary evidence may be received in the form of copies of excerpts or by
113 incorporation by reference.

114 (d) Every party shall have the right of cross-examination of witnesses who testify and may submit rebuttal evidence.

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

119 Section 8. A law enforcement agency may not prohibit secondary employment but may promulgate reasonable
120 regulations as to a law enforcement officer's secondary employment.

121 Section 9. The rights established by the provisions of this chapter shall not be diminished or abridged by any local
122 ordinance or collective bargaining agreement