

HOUSE No. 03178

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

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PETITION OF:

NAME:

John P. Fresolo

Raymond McGrath

DISTRICT/ADDRESS:

16th Worcester

159 Burgin Parkway

Quincy, MA 02169-4213

HOUSE No. 03178

By Mr. Fresolo of Worcester, a petition (accompanied by bill, House, No. 3178) of Fresolo for legislation to establish a law enforcement bill of rights Joint Committee on Public Service.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 2418 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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
3 sworn member of: The Massachusetts State police, any municipal police force, the police
4 department or force of any region or county, the Office of the Sheriff of any County, any state or
5 county correctional facility, any special law enforcement unit pursuant to chapter 22C

6 Section 2. When any public safety officer is under investigation and subjected to interrogation by
7 his commanding officer, or any other member of the employing public safety department, which
8 could lead to punitive action, such interrogation shall be conducted under the following

9 conditions. For the purpose of this chapter, punitive action is defined as any action which may
10 lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for
11 purposes of punishment.

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

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

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

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

28 (e) The public safety officer under interrogation shall not be subjected to offensive language or
29 threatened with punitive action, except that an officer refusing to respond to questions or submit
30 to interrogations shall be informed that failure to answer questions directly related to the

31 investigation or interrogation may result in punitive action. No promise of reward shall be made
32 as an inducement to answering any question. The employer shall not cause the public safety
33 officer under interrogation to be subjected to visits by the press or news media without his
34 express consent nor shall his home address or photograph be given to the press or news media
35 without his express consent.

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

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

47 (h) Upon the filing of a formal written statement of charges, or whenever an interrogation
48 focuses on matters which are likely to result in punitive action against any public safety officer,
49 that officer, at his request, shall have the right to be represented by a representative of his choice
50 who may be present at all times during such interrogation. The representative shall not be a
51 person subject to the same investigation. The representative shall not be required to disclose, nor
52 be subject to any punitive action for refusing to disclose, any information received from the

53 officer under investigation for noncriminal matters. This section shall not apply to any
54 interrogation of a public safety officer in the normal course of duty, counseling, instruction, or
55 informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or
56 any other public safety officer, nor shall this section apply to an investigation concerned solely
57 and directly with alleged criminal activities.

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

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

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

66 1. The identity of confidential sources;

67 2. Any nonexculpatory information; and

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

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

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

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

76 (m) The law enforcement officer under interrogation may not be threatened with transfer,
77 dismissal, or disciplinary action. (n) Unless otherwise required or conducted on a routine basis,
78 no law enforcement officer shall be required to submit to blood alcohol tests, blood, breath, or
79 urine tests for controlled substances, polygraph examinations or interrogations which specifically
80 relate to the subject of the investigation. The results of any such test are not admissible or
81 discoverable in any criminal or civil proceeding against the law enforcement officer, when said
82 officer has been ordered to submit thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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