

111TH CONGRESS
1ST SESSION

H. R. 1972

To amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide standards and procedures to guide State and local law enforcement agencies and law enforcement officers during internal investigations, interrogation of law enforcement officers, and administrative disciplinary hearings, to ensure accountability of law enforcement officers, to guarantee the due process rights of law enforcement officers, and to require States to enact law enforcement discipline, accountability, and due process laws.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2009

Mr. STUPAK (for himself and Mr. PAULSEN) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide standards and procedures to guide State and local law enforcement agencies and law enforcement officers during internal investigations, interrogation of law enforcement officers, and administrative disciplinary hearings, to ensure accountability of law enforcement officers, to guarantee the due process rights of law enforcement officers, and to require States to enact law enforcement discipline, accountability, and due process laws.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Law Enforcement Offi-
5 cer’s Procedural Bill of Rights Act of 2009”.

6 **SEC. 2. FINDINGS; DECLARATION OF PURPOSE AND POL-**
7 **ICY.**

8 (a) FINDINGS.—Congress finds that—

9 (1) a significant lack of due process rights of
10 law enforcement officers during internal investiga-
11 tions and disciplinary proceedings has resulted in a
12 loss of confidence in these processes by many law
13 enforcement officers, including those unfairly tar-
14 geted for their labor organization activities or for
15 their legitimate enforcement of the laws, demor-
16 alizing many rank and file officers in communities
17 and States;

18 (2) unfair treatment of officers has potentially
19 serious long-term consequences for law enforcement
20 by potentially deterring or otherwise preventing offi-
21 cers from carrying out their duties and responsibil-
22 ities effectively and fairly in relation to law enforce-
23 ment and homeland security;

24 (3) in light of Congressional authorization of
25 local law enforcement officers to act across State

1 lines for Homeland Security purposes during emer-
2 gencies, and in connection with mutual aid agree-
3 ments among the States, there is a need to provide
4 stability and continuity in policing operations and
5 safeguard the rights and protections of law enforce-
6 ment officers who may be called upon to act beyond
7 their local jurisdictions;

8 (4) the rights of law enforcement officers to en-
9 gage in or refrain from political activity while off-
10 duty, or to run as candidates for public office, unless
11 such service is found to be in conflict with their
12 service as officers, are protected by the first amend-
13 ment of the United States Constitution;

14 (5) the lack of labor-management cooperation
15 in disciplinary matters and either the perception or
16 the actuality that officers are not treated fairly det-
17 rimentally impacts the recruitment of and retention
18 of effective officers, as potential officers and experi-
19 enced officers seek other careers which has serious
20 implications and repercussions for officer morale,
21 public safety, and labor-management relations and
22 strife and can affect interstate and intrastate com-
23 merce, interfering with the normal flow of com-
24 merce;

1 (6) there are serious implications for the public
2 safety of the citizens and residents of the United
3 States which threatens the domestic tranquility of
4 the United States because of a lack of statutory pro-
5 tections to ensure—

6 (A) the due process rights of law enforce-
7 ment officers;

8 (B) fair and thorough internal investiga-
9 tions and interrogations of and disciplinary pro-
10 ceedings against law enforcement officers; and

11 (C) effective procedures for receipt, review,
12 and investigation of complaints against officers,
13 fair to both officers and complainants; and

14 (7) resolving these disputes and problems and
15 preventing the disruption of vital police services is
16 essential to the well-being of the United States and
17 the domestic tranquility of the Nation.

18 (b) DECLARATION OF PURPOSE AND POLICY.—Con-
19 gress declares that it is the purpose of this Act and the
20 policy of the United States to—

21 (1) protect the due process rights of State and
22 local law enforcement officers and ensure equality
23 and fairness of treatment among such officers;

24 (2) provide continued police protection to the
25 general public;

1 (3) provide for the general welfare and ensure
2 domestic tranquility; and

3 (4) prevent any impediments to the free flow of
4 commerce, under the rights guaranteed under the
5 United States Constitution and Congress' authority
6 thereunder.

7 **SEC. 3. DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS**

8 **RIGHTS OF OFFICERS.**

9 The Omnibus Crime Control and Safe Streets Act of
10 1968 (42 U.S.C. 3782 et seq.) is amended—

11 (1) by redesignating part JJ, as added by sec-
12 tion 952 of Public Law 110–315 (relating to Loan
13 Repayment for Prosecutors and Public Defenders),
14 as part LL, and moving such part so that such part
15 follows part KK;

16 (2) in part LL, as so redesignated and moved
17 by paragraph (1), by redesignating section 3001 as
18 section 3021; and

19 (3) by adding at the end the following new part:

1 **“PART MM—DISCIPLINE, ACCOUNTABILITY, AND**
2 **DUE PROCESS RIGHTS OF STATE AND LOCAL**
3 **LAW ENFORCEMENT OFFICERS**

4 **“SEC. 3031. DISCIPLINE, ACCOUNTABILITY, AND DUE PROC-**
5 **ESS RIGHTS OF STATE AND LOCAL LAW EN-**
6 **FORCEMENT OFFICERS.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) DISCIPLINARY ACTION.—The term ‘dis-

9 ciplinary action’ means any adverse personnel action

10 taken against a law enforcement officer in response

11 to an alleged violation of any rule, regulation, policy,

12 procedure, or directive by such officer, and shall in-

13 clude suspension, reduction in pay, rank, or other

14 employment benefit, dismissal, transfer, reassign-

15 ment, unreasonable denial of secondary employment,

16 denial of promotion, unpaid leave from employment,

17 or other adverse actions.

18 “(2) DISCIPLINARY HEARING.—The term ‘dis-

19 ciplinary hearing’ means an administrative hearing

20 initiated by a law enforcement agency against a law

21 enforcement officer which may result in disciplinary

22 action.

23 “(3) SUMMARY SUSPENSION.—The term ‘sum-

24 mary suspension’ means the temporary action by a

25 law enforcement agency of relieving a law enforce-

26 ment officer from the active performance of law en-

1 enforcement duties without a reduction in pay or bene-
2 fits when the law enforcement agency, or an official
3 within that agency, determines that there is probable
4 cause, based upon the conduct of the law enforce-
5 ment officer, to believe that the law enforcement of-
6 ficer poses an immediate threat to the safety of that
7 officer, others, or the property of others.

8 “(4) INVESTIGATION.—The term ‘investigation’
9 means an action taken to determine whether a law
10 enforcement officer violated a rule, regulation, pol-
11 icy, procedure, or directive, which may include—

12 “(A) asking questions of any other law en-
13 forcement officer or nonlaw enforcement officer;

14 “(B) conducting observations;

15 “(C) asking questions of law enforcement
16 officers during an on scene investigation of an
17 officer involved shooting;

18 “(D) seizing property;

19 “(E) reviewing and evaluating reports,
20 records, or other documents; and

21 “(F) examining physical evidence.

22 “(5) LAW ENFORCEMENT OFFICER.—The terms
23 ‘law enforcement officer’ and ‘officer’ have the
24 meaning given the term ‘law enforcement officer’ in
25 section 1204, except the term does not include a law

1 enforcement officer employed by the United States,
2 or any department, agency, or instrumentality there-
3 of.

4 “(6) PERSONNEL RECORD.—The term ‘per-
5 sonnel record’ means any document or file, whether
6 in written or electronic form and irrespective of loca-
7 tion, that has been or may be used in determining
8 the qualifications of a law enforcement officer for
9 employment, promotion, transfer, additional com-
10 pensation, termination, or any other disciplinary ac-
11 tion.

12 “(7) PUBLIC AGENCY AND LAW ENFORCEMENT
13 AGENCY.—The terms ‘public agency’ and ‘law en-
14 forcement agency’ each have the meaning given the
15 term ‘public agency’ in section 1204, except the
16 terms do not include the United States, or any de-
17 partment, agency, or instrumentality thereof.

18 “(8) LIE DETECTOR.—The term ‘lie detector’
19 means a polygraph, deceptograph, voice stress ana-
20 lyzer, psychological stress evaluator, or any other
21 similar device, whether mechanical or electrical, that
22 is used, or the results of which are used, for the pur-
23 pose of rendering a diagnostic opinion regarding the
24 honesty or dishonesty of an individual.

1 “(9) SUMMARY PUNISHMENT.—The term ‘sum-
2 mary punishment’ means any punishment imposed
3 for a violation of law that—

4 “(A) does not result in any disciplinary ac-
5 tion; or

6 “(B) has been negotiated and agreed upon
7 by the law enforcement agency and the law en-
8 forcement officer, based upon a written waiver
9 by the officer of the rights of that officer under
10 subsection (h) and any other applicable law or
11 constitutional provision, after consultation with
12 the counsel or representative of that officer.

13 “(b) APPLICABILITY.—

14 “(1) IN GENERAL.—This section sets forth the
15 due process rights, including procedures, that shall
16 be afforded a law enforcement officer who is the
17 subject of an investigation or disciplinary hearing.

18 “(2) NONAPPLICABILITY.—This section does
19 not apply in the case of—

20 “(A) an investigation of specifically alleged
21 conduct by a law enforcement officer that, if
22 proven, would constitute a violation of a statute
23 providing for criminal penalties; or

24 “(B) a nondisciplinary action taken in
25 good faith on the basis of the employment-re-

1 lated performance of law enforcement officers,
2 and those serving in a law enforcement capacity
3 holding an elected or appointed office.

4 “(c) EFFECTIVE PROCEDURES FOR RECEIPT, RE-
5 VIEW, AND INVESTIGATION OF COMPLAINTS AGAINST
6 LAW ENFORCEMENT OFFICERS.—

7 “(1) COMPLAINT PROCESS.—Not later than one
8 year after the effective date of this section, each law
9 enforcement agency shall adopt and comply with a
10 written complaint procedure that—

11 “(A) authorizes persons from within and
12 outside the law enforcement agency to submit
13 written complaints about a law enforcement of-
14 ficer to—

15 “(i) the law enforcement agency em-
16 ploying the law enforcement officer; or

17 “(ii) any other law enforcement agen-
18 cy charged with investigating such com-
19 plaints;

20 “(B) sets forth the procedures for the in-
21 vestigation and disposition of such complaints;

22 “(C) provides for public access to required
23 forms and other information concerning the
24 submission and disposition of written com-
25 plaints; and

1 “(D) requires notification to the complain-
2 ant in writing of the final disposition of the
3 complaint and the reasons for such disposition.

4 “(2) INITIATION OF AN INVESTIGATION.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), an investigation based on a
7 complaint from within or outside the law en-
8 forcement agency shall commence not later than
9 15 days after the receipt of the complaint by—

10 “(i) the law enforcement agency em-
11 ploying the law enforcement officer against
12 whom the complaint has been made; or

13 “(ii) any other law enforcement agen-
14 cy charged with investigating such a com-
15 plaint.

16 “(B) EXCEPTION.—Subparagraph (A)
17 shall not apply if—

18 “(i) the law enforcement agency deter-
19 mines from the face of the complaint that
20 each allegation does not constitute a viola-
21 tion of law; or

22 “(ii) the complainant fails to comply
23 substantially with the complaint procedure
24 of the law enforcement agency established
25 under this section.

1 “(3) CONFLICT OF INTEREST.—The complain-
2 ant or victim of the alleged conduct giving rise to an
3 investigation under this subsection or any other indi-
4 vidual with a conflict of interest may not conduct or
5 supervise the investigation or serve as an investi-
6 gator.

7 “(d) NOTICE OF INVESTIGATION.—

8 “(1) IN GENERAL.—Any law enforcement offi-
9 cer who is the subject of an investigation shall be
10 notified of the investigation not less than 24 hours
11 before the commencement of questioning or before
12 otherwise being required to provide information to
13 an investigating agency.

14 “(2) CONTENTS OF NOTICE.—Notice given
15 under paragraph (1) shall include—

16 “(A) the nature and scope of the investiga-
17 tion;

18 “(B) a description of any allegation con-
19 tained in a written complaint;

20 “(C) a description of each violation of law
21 alleged in the complaint for which suspicion ex-
22 ists that the officer may have engaged in con-
23 duct that may subject the officer to disciplinary
24 action; and

1 “(D) the name, rank, and command of the
2 officer or any other individual who will be con-
3 ducting the investigation.

4 “(e) RIGHTS OF LAW ENFORCEMENT OFFICERS
5 PRIOR TO AND DURING QUESTIONING INCIDENTAL TO AN
6 INVESTIGATION.—If a law enforcement officer is subjected
7 to questioning incidental to an investigation that may re-
8 sult in disciplinary action against the officer, the following
9 minimum safeguards shall apply:

10 “(1) COUNSEL AND REPRESENTATION.—

11 “(A) IN GENERAL.—Any law enforcement
12 officer under investigation shall be entitled to
13 effective counsel by an attorney or representa-
14 tion by any other person who the officer choos-
15 es, such as an employee representative, or both,
16 immediately before and during the entire period
17 of any questioning session, unless the officer
18 consents in writing to being questioned outside
19 the presence of counsel or representative.

20 “(B) PRIVATE CONSULTATION.—During
21 the course of any questioning session, the offi-
22 cer shall be afforded the opportunity to consult
23 privately with counsel or a representative, if
24 such consultation does not repeatedly and un-
25 necessarily disrupt the questioning period.

1 “(C) UNAVAILABILITY OF COUNSEL.—If
2 the counsel or representative of the law enforce-
3 ment officer is not available within 24 hours of
4 the time set for the commencement of any ques-
5 tioning of that officer, the investigating law en-
6 forcement agency shall grant a reasonable ex-
7 tension of time for the law enforcement officer
8 to obtain counsel or representation.

9 “(2) REASONABLE HOURS AND TIME.—The in-
10 terrogation shall be conducted at a reasonable hour,
11 preferably at a time when the law enforcement offi-
12 cer is on duty, or during the normal waking hours
13 for the law enforcement officer, unless the serious-
14 ness of the investigation requires otherwise. If the
15 interrogation does occur during off-duty time of the
16 law enforcement officer being interrogated, the law
17 enforcement officer shall be compensated for any
18 such off-duty time in accordance with regular de-
19 partment procedures.

20 “(3) PLACE OF QUESTIONING.—Unless the offi-
21 cer consents in writing to being questioned else-
22 where, any questioning of a law enforcement officer
23 under investigation shall take place—

24 “(A) at the office of the individual con-
25 ducting the investigation on behalf of the law

1 enforcement agency employing the officer under
2 investigation; or

3 “(B) the place at which the officer under
4 investigation reports for duty.

5 “(4) IDENTIFICATION OF QUESTIONERS.—Be-
6 fore the commencement of any questioning, a law
7 enforcement officer under investigation shall be in-
8 formed of—

9 “(A) the name, rank, and command of
10 each officer or other individual who will conduct
11 the questioning; and

12 “(B) the relationship between each such
13 individual conducting the questioning and the
14 law enforcement agency employing the officer
15 under investigation.

16 “(5) NO MORE THAN TWO QUESTIONERS.—All
17 questions directed to the law enforcement officer
18 under interrogation shall be asked by and through
19 no more than two interrogators at one time.

20 “(6) REASONABLE TIME PERIOD.—Any ques-
21 tioning of a law enforcement officer under investiga-
22 tion shall be for a reasonable period of time, taking
23 into consideration the gravity and complexity of the
24 issue being investigated, and shall allow reasonable
25 periods for the rest and personal necessities of the

1 officer and the counsel or representative of the offi-
2 cer, if such person is present.

3 “(7) NO THREATS, FALSE STATEMENTS, OR
4 PROMISES TO BE MADE.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), the law enforcement officer
7 shall not be subjected to offensive language,
8 threats, misleading statements, or promises of a
9 reward in attempts to induce the officer to an-
10 swer any question, give any statement, or other-
11 wise provide information.

12 “(B) EXCEPTION.—The law enforcement
13 agency employing a law enforcement officer
14 under investigation may require the officer to
15 make a statement relating to the investigation
16 by explicitly threatening disciplinary action, in-
17 cluding termination, only if—

18 “(i) the officer has received a written
19 grant of use and derivative use immunity
20 or transactional immunity by a person au-
21 thorized to grant such immunity; and

22 “(ii) the statement given by the law
23 enforcement officer under such an immu-
24 nity may not be used in any subsequent
25 criminal proceeding against that officer.

1 “(8) COERCION.—No statement made during
2 interrogation by a law enforcement officer under du-
3 ress, coercion, or threat shall be admissible in any
4 subsequent civil proceeding against that officer.

5 “(9) CRIMINAL CHARGES.—If prior to or during
6 the interrogation of a law enforcement officer it is
7 deemed that the officer may be charged with a
8 criminal offense, the officer shall be immediately in-
9 formed of his or her constitutional rights, and shall
10 be entitled to counsel. Disciplinary action based sole-
11 ly on criminal charges shall not be made final until
12 the criminal investigation of such charges has been
13 completed, and all court proceedings are concluded.

14 “(10) RECORDING.—

15 “(A) IN GENERAL.—All questioning of a
16 law enforcement officer under an investigation
17 shall be recorded in full, in writing or by elec-
18 tronic device, and a copy of the transcript shall
19 be provided to the officer under investigation,
20 free of charge, before any subsequent period of
21 questioning or the filing of any charge against
22 that officer.

23 “(i) Except as provided in clause (ii)
24 a transcribed copy of any notes made by a
25 stenographer and any reports of com-

1 plaints made by investigators or other per-
2 sons, shall be made available to the law en-
3 forcement officer.

4 “(ii) Clause (i) does not apply if the
5 notes or reports have been deemed to be
6 confidential by the investigating agency.
7 No notes or reports that have been deemed
8 to be confidential may be included in the
9 officer’s personnel file.

10 “(B) SEPARATE RECORDING.—To ensure
11 the accuracy of the recording, an officer may
12 utilize a separate electronic recording device,
13 and a copy of any such recording (or the tran-
14 script) shall be provided to the public agency
15 conducting the questioning, if that agency so
16 requests.

17 “(11) USE OF HONESTY TESTING DEVICES.—

18 “(A) No law enforcement officer under in-
19 vestigation may be compelled to submit to the
20 use of a lie detector, as defined in section 2 of
21 the Employee Polygraph Protection Act of 1988
22 (29 U.S.C. 2001).

23 “(B) No disciplinary action or other re-
24 crimination shall be taken against a law en-
25 forcement officer for refusing to submit to a lie

1 detector test, nor shall any comment regarding
2 an officer's decision to submit to or refuse such
3 a test be entered in the investigator's notes or
4 in any other file or document, nor shall any tes-
5 timony or evidence regarding such a decision by
6 an officer be admissible at a subsequent hear-
7 ing, trial, or proceeding, whether judicial or ad-
8 ministrative.

9 “(12) USE OF THE MEDIA.—The employer shall
10 not cause the law enforcement officer under interro-
11 gation to be subjected to visits by the press or news
12 media without the express consent of the officer, nor
13 shall the name, home address, or photograph of the
14 officer be given to the press or news media without
15 the officer's express consent.

16 “(f) NOTICE OF INVESTIGATIVE FINDINGS AND DIS-
17 CIPLINARY RECOMMENDATION AND OPPORTUNITY TO
18 SUBMIT A WRITTEN RESPONSE.—

19 “(1) NOTICE.—Except as provided in para-
20 graph (3), not later than 15 days after the conclu-
21 sion of an investigation under this subsection, the
22 person in charge of the investigation or the designee
23 of that person shall notify the law enforcement offi-
24 cer who was the subject of the investigation, in writ-

1 ing, of the investigative findings and any rec-
2 ommendations for disciplinary action.

3 “(2) OPPORTUNITY TO SUBMIT WRITTEN RE-
4 SPONSE.—

5 “(A) IN GENERAL.—Not later than 30
6 days after receipt of a notification under para-
7 graph (1), and before the filing of any charge
8 seeking the discipline of such officer or the
9 commencement of any disciplinary proceeding
10 under subsection (g), the law enforcement offi-
11 cer who was the subject of the investigation
12 may submit a written response to the findings
13 and recommendations included in the notifica-
14 tion.

15 “(B) CONTENTS OF RESPONSE.—The re-
16 sponse submitted under subparagraph (A) may
17 include references to additional documents,
18 physical objects, witnesses, or any other infor-
19 mation that the law enforcement officer believes
20 may provide exculpatory evidence.

21 “(3) EXCEPTIONS.—Permissible exceptions to
22 paragraph (1) are as follows:

23 “(A) If the act, omission, or other allega-
24 tion of misconduct is also the subject of a
25 criminal investigation or prosecution, the time

1 during which the criminal investigation or prosecution is pending shall be extended until 30
2 days after the completion of such investigation
3 or prosecution.
4

5 “(B) If the law enforcement officer voluntarily waives the 15-day period in writing, the
6 time period shall be extended for the period of
7 time specified in the written waiver.
8

9 “(C) If the investigation is a multi-jurisdictional investigation that requires a reasonable
10 extension for coordination of the involved
11 agencies.
12

13 “(D) If the law enforcement officer who is being investigated is incapacitated or is otherwise
14 unavailable.
15

16 “(E) If the investigation involves an allegation of workers’ compensation fraud on the part
17 of the law enforcement officer.
18

19 “(g) DISCIPLINARY HEARING.—

20 “(1) NOTICE OF OPPORTUNITY FOR HEARING.—Except in a case of summary punishment or
21 summary suspension (subject to subsection (i) or (j),
22 respectively), before the imposition of any disciplinary
23 action the law enforcement agency shall notify
24 the officer that the officer is entitled to a due
25

1 ess hearing by an independent and impartial hearing
2 officer or board.

3 “(2) REQUIREMENT OF DETERMINATION OF
4 VIOLATION.—No disciplinary action may be taken
5 against a law enforcement officer unless an inde-
6 pendent and impartial hearing officer or board de-
7 termines, after a hearing and in accordance with the
8 requirements of this subsection, that the law en-
9 forcement officer committed a violation of a rule,
10 regulation, policy, procedure, or directive.

11 “(3) TIME LIMIT.—No disciplinary charge may
12 be brought against a law enforcement officer un-
13 less—

14 “(A) the charge is filed not later than the
15 earlier of—

16 “(i) 1 year after the date on which the
17 law enforcement agency filing the charge
18 had knowledge or reasonably should have
19 had knowledge of an alleged violation of a
20 rule, regulation, policy, procedure, or direc-
21 tive; or

22 “(ii) 90 days after the commencement
23 of an investigation; or

1 “(B) the requirements of this paragraph
2 are waived in writing by the officer or the coun-
3 sel or representative of the officer.

4 “(4) NOTICE OF HEARING.—Unless waived in
5 writing by the officer or the counsel or representa-
6 tive of the officer, not later than 30 days after the
7 filing of a disciplinary charge against a law enforce-
8 ment officer, the law enforcement agency filing the
9 charge shall provide written notification to the law
10 enforcement officer who is the subject of the charge,
11 of—

12 “(A) the date, time, and location of any
13 disciplinary hearing, which shall be scheduled in
14 cooperation with the law enforcement officer, or
15 the counsel or representative of the officer, and
16 which shall take place not earlier than 30 days
17 and not later than 60 days after notification of
18 the hearing is given to the law enforcement offi-
19 cer under investigation;

20 “(B) the name and mailing address of the
21 independent and impartial hearing officer, or
22 the names and mailing addresses of the inde-
23 pendent and impartial hearing board members;
24 and

1 “(C) the name, rank, command, and ad-
2 dress of the law enforcement officer prosecuting
3 the matter for the law enforcement agency, or
4 the name, position, and mailing address of the
5 person prosecuting the matter for a public
6 agency, if the prosecutor is not a law enforce-
7 ment officer.

8 “(5) ACCESS TO DOCUMENTARY EVIDENCE AND
9 INVESTIGATIVE FILE.—Unless waived in writing by
10 the law enforcement officer or the counsel or rep-
11 resentative of that officer, not later than 15 days be-
12 fore a disciplinary hearing described in this sub-
13 section, the law enforcement officer shall be provided
14 with—

15 “(A) a copy of the complete file of the pre-
16 disciplinary investigation; and

17 “(B) access to and, if so requested, copies
18 of all documents, including transcripts, records,
19 written statements, written reports, analyses,
20 and electronically recorded information that—

21 “(i) contain exculpatory information;

22 “(ii) are intended to support any dis-
23 ciplinary action; or

24 “(iii) are to be introduced in the dis-
25 ciplinary hearing.

1 “(6) EXAMINATION OF PHYSICAL EVIDENCE.—
2 Unless waived in writing by the law enforcement of-
3 ficer or the counsel or representative of that offi-
4 cer—

5 “(A) not later than 15 days before a dis-
6 ciplinary hearing, the prosecuting agency shall
7 notify the law enforcement officer or the coun-
8 sel or representative of that officer of all phys-
9 ical, nondocumentary evidence; and

10 “(B) not later than 15 days before a dis-
11 ciplinary hearing, the prosecuting agency shall
12 provide a reasonable date, time, place, and
13 manner for the law enforcement officer or the
14 counsel or representative of the law enforce-
15 ment officer to examine the evidence described
16 in subparagraph (A).

17 “(7) IDENTIFICATION OF WITNESSES.—Unless
18 waived in writing by the law enforcement officer or
19 the counsel or representative of the officer, not later
20 than 15 days before a disciplinary hearing, the pros-
21 ecuting agency shall notify the law enforcement offi-
22 cer or the counsel or representative of the officer, of
23 the name and address of each witness for the law
24 enforcement agency employing the law enforcement
25 officer.

1 “(8) REPRESENTATION.—During a disciplinary
2 hearing, the law enforcement officer who is the sub-
3 ject of the hearing shall be entitled to due process,
4 including—

5 “(A) the right to be represented by counsel
6 or a representative of the officer’s choosing;

7 “(B) the right to confront and examine all
8 witnesses against the officer; and

9 “(C) the right to call and examine wit-
10 nesses on behalf of the officer.

11 “(9) HEARING BOARD AND PROCEDURE.—

12 “(A) IN GENERAL.—A State or local gov-
13 ernment agency, other than the law enforce-
14 ment agency employing the officer who is sub-
15 ject of the disciplinary hearing, shall—

16 “(i) determine the composition of an
17 independent and impartial disciplinary
18 hearing board;

19 “(ii) appoint an independent and im-
20 partial hearing officer; and

21 “(iii) establish such procedures as
22 may be necessary to comply with this sec-
23 tion.

24 “(B) PEER REPRESENTATION ON DISCIPLI-
25 NARY HEARING BOARD.—A disciplinary hearing

1 board that includes employees of the law en-
2 forcement agency employing the law enforce-
3 ment officer who is the subject of the hearing,
4 shall include not less than 1 law enforcement
5 officer of equal or lesser rank to the officer who
6 is the subject of the hearing.

7 “(10) SUMMONSES AND SUBPOENAS.—

8 “(A) IN GENERAL.—The disciplinary hear-
9 ing board or independent hearing officer—

10 “(i) shall have the authority to issue
11 summonses or subpoenas, on behalf of—

12 “(I) the law enforcement agency
13 employing the officer who is the sub-
14 ject of the hearing; or

15 “(II) the law enforcement officer
16 who is the subject of the hearing; and

17 “(ii) upon written request of either
18 the agency or the officer, shall issue a
19 summons or subpoena, as appropriate, to
20 compel the appearance and testimony of a
21 witness or the production of documentary
22 evidence.

23 “(B) EFFECT OF FAILURE TO COMPLY
24 WITH SUMMONS OR SUBPOENA.—With respect

1 to any failure to comply with a summons or a
2 subpoena issued under subparagraph (A)—

3 “(i) the disciplinary hearing officer or
4 board shall petition a court of competent
5 jurisdiction to issue an order compelling
6 compliance; and

7 “(ii) subsequent failure to comply
8 with such a court order issued pursuant to
9 a petition under clause (i) shall—

10 “(I) be subject to contempt of a
11 court proceedings according to the
12 laws of the jurisdiction within which
13 the disciplinary hearing is being con-
14 ducted; and

15 “(II) result in the recess of the
16 disciplinary hearing until the witness
17 becomes available to testify and does
18 testify or is held in contempt.

19 “(11) CLOSED HEARING.—A disciplinary hear-
20 ing shall be closed to the public unless the law en-
21 forcement officer who is the subject of the hearing
22 requests, in writing, that the hearing be open to
23 specified individuals or to the general public.

1 “(12) RECORDING.—All aspects of a discipli-
2 nary hearing, including pre-hearing motions, shall be
3 recorded by electronic media or transcription.

4 “(13) SEQUESTRATION OF WITNESSES.—Either
5 side in a disciplinary hearing may move for and be
6 entitled to sequestration of witnesses.

7 “(14) TESTIMONY UNDER OATH.—The hearing
8 officer or board shall administer an oath or affirma-
9 tion to each witness, who shall testify subject to the
10 laws of perjury of the State in which the disciplinary
11 hearing is being conducted.

12 “(15) FINAL DECISION ON EACH CHARGE.—

13 “(A) IN GENERAL.—At the conclusion of
14 the presentation of all the evidence and after
15 oral or written argument, the hearing officer or
16 board shall deliberate and render a written final
17 decision on each charge.

18 “(B) FINAL DECISION ISOLATED TO
19 CHARGE BROUGHT.—The hearing officer or
20 board may not find that the law enforcement
21 officer who is the subject of the hearing is liable
22 for disciplinary action for any violation, as to
23 which the officer was not charged.

1 “(16) BURDEN OF PERSUASION AND STANDARD
2 OF PROOF.—The burden of persuasion or standard
3 of proof of the prosecuting agency shall be—

4 “(A) by clear and convincing evidence as to
5 each charge alleging false statement or rep-
6 resentation, fraud, dishonesty, deceit, moral
7 turpitude, or criminal behavior on the part of
8 the law enforcement officer who is the subject
9 of the charge; and

10 “(B) by a preponderance of the evidence as
11 to all other charges.

12 “(17) FACTORS OF JUST CAUSE TO BE CONSID-
13 ERED BY THE HEARING OFFICER OR BOARD.—A law
14 enforcement officer who is the subject of a discipli-
15 nary hearing shall not be found guilty of any charge
16 or subjected to any disciplinary action unless the
17 disciplinary hearing board or independent hearing
18 officer finds that—

19 “(A) the officer who is the subject of the
20 charge could reasonably be expected to have
21 had knowledge of the probable consequences of
22 the alleged conduct set forth in the charge
23 against the officer;

24 “(B) the rule, regulation, policy, proce-
25 dure, or directive that the officer who is the

1 subject of the charge allegedly violated is rea-
2 sonable;

3 “(C) the charging party, before filing the
4 charge, made a reasonable, fair, and objective
5 effort to discover whether the officer did in fact
6 violate the rule, regulation, policy, procedure, or
7 directive as charged;

8 “(D) the charging party did not conduct
9 the investigation arbitrarily or unfairly, or in a
10 discriminatory manner, against the officer who
11 is the subject of the charge, and the charge was
12 brought in good faith; and

13 “(E) the proposed disciplinary action rea-
14 sonably relates to the seriousness of the alleged
15 violation and to the record of service of the offi-
16 cer who is the subject of the charge.

17 “(18) FINDING OF NO VIOLATION.—If the offi-
18 cer who is the subject of the disciplinary hearing is
19 found not to have committed the alleged violation—

20 “(A) the matter is concluded;

21 “(B) no disciplinary action may be taken
22 against the officer;

23 “(C) the personnel file of that officer may
24 not contain any reference to the charge for
25 which the officer was found not guilty; and

1 “(D) any pay and benefits lost or deferred
2 during the pendency of the disposition of the
3 charge shall be restored to the officer as though
4 no charge had ever been filed against the offi-
5 cer, including salary or regular pay, vacation,
6 holidays, longevity pay, education incentive pay,
7 shift differential, uniform allowance, lost over-
8 time, other premium pay opportunities, medical
9 expenses, lost pension, and lost promotional op-
10 portunities.

11 “(19) FINDING OF A VIOLATION.—

12 “(A) IN GENERAL.—If the officer who is
13 the subject of the charge is found to have com-
14 mitted the alleged violation, the hearing officer
15 or board shall make a written recommendation
16 of a penalty to the law enforcement agency em-
17 ploying the officer or any other governmental
18 entity that has final disciplinary authority, as
19 provided by applicable State or local law.

20 “(B) PENALTY.—The employing agency or
21 other governmental entity may not impose a
22 penalty greater than the penalty recommended
23 by the hearing officer or board.

24 “(20) APPEAL.—

1 “(A) IN GENERAL.—Any officer who has
2 been found to have committed an alleged viola-
3 tion shall have 30 days to make an appeal from
4 a final decision of a hearing officer or hearing
5 board to a court of competent jurisdiction or to
6 an independent neutral arbitrator to the extent
7 available in any other administrative proceeding
8 under applicable State or local law, or a collec-
9 tive bargaining agreement.

10 “(B) EVIDENTIARY PROCEDURES.—Any
11 administrative hearing under this section shall
12 follow applicable evidentiary procedures pro-
13 vided under State law.

14 “(h) WAIVER OF RIGHTS.—

15 “(1) IN GENERAL.—An officer who is notified
16 that the officer is under investigation or is the sub-
17 ject of a charge may, after such notification, waive
18 any right or procedure guaranteed by this section.

19 “(2) WRITTEN WAIVER.—A written waiver
20 under this subsection shall be—

21 “(A) in writing; and

22 “(B) signed by—

23 “(i) the officer, who shall have con-
24 sulted with counsel or a representative be-
25 fore signing any such waiver; or

1 “(ii) the counsel or representative of
2 the officer, if expressly authorized by sub-
3 section (g).

4 “(i) SUMMARY PUNISHMENT.—Nothing in this sec-
5 tion shall preclude a public agency from imposing sum-
6 mary punishment.

7 “(j) SUMMARY SUSPENSION.—Nothing in this section
8 shall be construed to preclude a law enforcement agency
9 from imposing a summary suspension on a law enforce-
10 ment officer, except that any such suspension shall—

11 “(1) be followed by a hearing in accordance
12 with the requirements of subsection (g); and

13 “(2) not deprive the affected officer of any pay
14 or benefit.

15 “(k) RETALIATION FOR EXERCISING RIGHTS.—
16 There shall be no imposition of, or threat of, disciplinary
17 action or other penalty against a law enforcement officer
18 for the exercise of any right provided to the officer under
19 this section.

20 “(l) OTHER REMEDIES NOT IMPAIRED.—Nothing in
21 this section may be construed to impair any other right
22 or remedy that a law enforcement officer may have under
23 any constitution, statute, ordinance, order, rule, regula-
24 tion, procedure, written policy, collective bargaining agree-
25 ment, or any other source.

1 “(m) DECLARATORY OR INJUNCTIVE RELIEF.—A
2 law enforcement officer who is aggrieved by a violation of,
3 or is otherwise denied any right afforded by, the Constitu-
4 tion of the United States, a State constitution, this sec-
5 tion, or any administrative rule or regulation promulgated
6 pursuant thereto, may file suit in any Federal or State
7 court of competent jurisdiction for declaratory or injunc-
8 tive relief to prohibit the law enforcement agency from vio-
9 lating or otherwise denying such right, and such court
10 shall have jurisdiction, for cause shown, to restrain such
11 a violation or denial.

12 “(n) PERSONNEL FILES.—

13 “(1) Except for administrative purposes and
14 purposes of departmental evaluation, personnel files
15 of law enforcement officers shall be sealed. Informa-
16 tion contained in a law enforcement officer’s per-
17 sonnel file shall be considered privileged.

18 “(2)(A) Except as provided in subparagraph
19 (B), no law enforcement officer shall have any com-
20 ment adverse to his interest entered in his personnel
21 file, or any other file used for any personnel pur-
22 poses by his employer, without the law enforcement
23 officer having first read and signed the instrument
24 containing the adverse comment, indicating that he
25 or she is aware of such comment.

1 “(B) If a law enforcement officer refuses to
2 read or sign an instrument as described in subpara-
3 graph (A), the officer’s refusal shall be noted in
4 writing on the instrument, the instrument shall be
5 signed or initialed by another officer who witnessed
6 the law enforcement officer’s refusal, and the instru-
7 ment shall be entered in the appropriate personnel
8 or other file.

9 “(3) A law enforcement officer shall have 30
10 days within which to file a written response to any
11 adverse comment entered in his personnel file. Such
12 written response shall be attached to, and shall ac-
13 company, the adverse comment, and shall be avail-
14 able for the purpose of any review or possible ap-
15 peal.

16 “(4) Every law enforcement department shall,
17 upon the request of a law enforcement officer, per-
18 mit the officer to inspect personnel files that are
19 used or have been used to determine the officer’s
20 qualifications for employment, evaluation, pro-
21 motion, additional compensation, or termination or
22 other disciplinary action. Such inspection shall be
23 permitted during usual business hours, with no loss
24 of compensation to the officer.

1 “(5) Each employer shall keep each law en-
2 forcement officer’s personnel file or a true and cor-
3 rect copy thereof as long as the officer is still an ac-
4 tive employee of the employer, and shall make the
5 file or copy thereof available within a twenty-four
6 hour period of time after a request therefore by the
7 officer.

8 “(6) If, after a law enforcement officer has ex-
9 amined his or her personnel file, the officer believes
10 that any portion of the material is mistakenly or un-
11 lawfully placed in the file, the officer may request,
12 in writing, that the mistaken or unlawful portion be
13 corrected or deleted. Any request made pursuant to
14 this paragraph shall include a statement by the offi-
15 cer describing the corrections or deletions requested
16 and the reasons supporting those corrections or dele-
17 tions. A statement submitted pursuant to this para-
18 graph shall become part of the personnel file of the
19 officer.

20 “(7) Within 30 days after receipt of a request
21 under paragraph (6), the employer shall either grant
22 the officer’s request or notify the officer of the deci-
23 sion to deny the request. If the employer denies the
24 request, in whole or in part, the employer shall pro-
25 vide to the officer, in writing, the reasons for deny-

1 ing the request, and that written statement shall be-
2 come part of the personnel file of the officer.

3 “(8) A law enforcement officer shall not have
4 access to information in the personnel records of the
5 officer if the information—

6 “(A) relates to the investigation of alleged
7 conduct that, if proven, would constitute or
8 have constituted a definite violation of a statute
9 providing for criminal penalties, but as to which
10 no formal charge was brought;

11 “(B) contains letters of reference for the
12 officer;

13 “(C) contains any portion of a test docu-
14 ment other than the results;

15 “(i) is of a personal nature about another
16 officer, and if disclosure of that information in
17 nonredacted form would constitute a clearly un-
18 warranted intrusion into the privacy rights of
19 that other officer; or

20 “(D) is relevant to any pending claim
21 brought by or on behalf of the officer against
22 the employing agency of that officer that may
23 be discovered in any judicial or administrative
24 proceeding between the officer and the employer
25 of that officer.

1 “(o) PROTECTION OF PERSONAL RECORDS AND PER-
2 SONAL PROPERTY.—

3 “(1) No law enforcement officer shall be re-
4 quired as a condition of employment by his or her
5 employing law enforcement department or other
6 public agency to consent to the use of his or her
7 photograph or identity as a law enforcement officer
8 on the Internet for any purpose if that officer rea-
9 sonably believes that the disclosure may result in
10 threat, harassment, intimidation, or harm to that of-
11 ficer or his or her family.

12 “(2) For purposes of job assignment or other
13 personnel action, no law enforcement officer shall be
14 required or requested to disclose any item of his
15 property, income, assets, source of income, debts, or
16 personal or domestic expenditures (including those
17 of any member of his family or household) unless
18 such information—

19 “(A) is obtained or required under State
20 law or proper legal procedure;

21 “(B) tends to indicate a conflict of interest
22 with respect to the performance of the officer’s
23 official duties; or

24 “(C) is necessary for the employing agency
25 to ascertain the desirability of assigning the law

1 enforcement officer to a specialized unit in
2 which there is a strong possibility that bribes or
3 other improper inducements may be offered.

4 “(3) No law enforcement department shall deny
5 or refuse to any law enforcement officer the rights
6 and protections guaranteed to the officer by this sec-
7 tion.

8 “(p) COURT OF JURISDICTION; JUDICIAL ENFORCE-
9 MENT.—

10 “(1) The appropriate State court in the State
11 in which a law enforcement department is located
12 shall have original jurisdiction over any proceeding
13 brought by any law enforcement officer against any
14 law enforcement department for alleged violations of
15 this section. Nothing in this subsection shall be con-
16 strued, by reason of a claim arising under this sec-
17 tion, to deny to the courts of the United States sup-
18 plemental jurisdiction over any Federal law claim for
19 which such courts have jurisdiction under section
20 1367 of title 28, United States Code, or any other
21 provision of law.

22 “(2) In any case where the court finds that a
23 law enforcement department has violated any of the
24 provisions of this section, the court shall render ap-
25 propriate injunctive or other relief to remedy the vio-

1 lation and to prevent future violations of a like or
2 similar nature, including the granting of a tem-
3 porary restraining order, preliminary, or permanent
4 injunction prohibiting the law enforcement depart-
5 ment from taking any disciplinary action against the
6 law enforcement officer, attorney fees, and any other
7 remedies deemed appropriate by the court.

8 “(3) If the court finds that a bad faith or frivo-
9 lous denial of rights, or a malicious filing for an im-
10 proper purpose, has been brought pursuant to this
11 section, the court may order sanctions against the
12 offending party, the party’s attorney, or both. Such
13 sanctions may include reasonable expenses incurred
14 by the opposing party (including attorney’s fees), as
15 the court deems appropriate. Nothing in this para-
16 graph is intended to subject actions or filings under
17 this section to rules or standards that are different
18 from those applicable to other civil actions or filings.
19 Any law enforcement department which has adopted,
20 through the action of its governing body or its offi-
21 cial designee, any procedure which provides to law
22 enforcement officers, at a minimum, the same rights
23 and protections as provided pursuant to this section
24 shall not be subject to this section with regard to
25 such a procedure.

1 “(4) Nothing in this section shall in any way be
2 construed to limit the use of any public safety agen-
3 cy or any law enforcement officer in the fulfilling of
4 mutual aid agreements with other jurisdictions or
5 agencies, nor shall this section be construed in any
6 way to limit any jurisdictional or interagency co-
7 operation under any circumstances where such activ-
8 ity is deemed necessary or desirable by the jurisdic-
9 tions or the agencies involved.

10 “(q) LAW ENFORCEMENT AGENCIES RIGHT TO PRO-
11 TECT CRIME SCENES.—

12 “(1) Every law enforcement agency is entitled
13 to protect the integrity of their crime scene inves-
14 tigation.

15 “(2) A law enforcement agency has the right,
16 when a law enforcement officer’s attorney is present,
17 to prohibit the officer and attorney from entering
18 the actual crime scene so that evidence is not dis-
19 turbed.

20 “(r) STATES’ RIGHTS.—Nothing in this section may
21 be construed—

22 “(1) to preempt any State or local law, or any
23 provision of a State or local law, in effect on the
24 date of enactment of the Law Enforcement Officer’s
25 Procedural Bill of Rights Act of 2009, that confers

1 a right or a protection that equals or exceeds the
2 right or protection afforded by this section; or

3 “(2) to prohibit the enactment of any State or
4 local law that confers a right or protection that
5 equals or exceeds a right or protection afforded by
6 this section.

7 “(s) COLLECTIVE BARGAINING AGREEMENTS.—
8 Nothing in this section may be construed to—

9 “(1) preempt any provision in a mutually
10 agreed-upon collective bargaining agreement, in ef-
11 fect on the date of enactment of the Law Enforce-
12 ment Officer’s Procedural Bill of Rights Act of
13 2009, that provides for substantially the same or a
14 greater right or protection afforded under this sec-
15 tion; or

16 “(2) prohibit the negotiation of any additional
17 right or protection for an officer who is subject to
18 any collective bargaining agreement.”.

19 **SEC. 4. PROHIBITION OF FEDERAL CONTROL OVER STATE**
20 **AND LOCAL CRIMINAL JUSTICE AGENCIES.**

21 Nothing in this Act shall be construed to authorize
22 any department, agency, officer, or employee of the United
23 States to exercise any direction, supervision, or control of
24 any police force or any criminal justice agency of any
25 State or any political subdivision thereof.

1 **SEC. 5. EFFECTIVE DATE.**

2 The amendments made by this Act shall take effect
3 with respect to each State on the earlier of—

4 (1) the date that is 2 years after the date of en-
5 actment of this Act; or

6 (2) the last day of the second legislative session
7 of the State that begins on or after the date of en-
8 actment of this Act.

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