

104TH CONGRESS
1ST SESSION

S. 334

To amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage States to enact a Law Enforcement Officers' Bill of Rights, to provide standards and protection for the conduct of internal police investigations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2 (legislative day, JANUARY 30), 1995

Mr. McCONNELL (for himself and Mr. BIDEN) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage States to enact a Law Enforcement Officers' Bill of Rights, to provide standards and protection for the conduct of internal police investigations, and for other purposes.

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 cers' Bill of Rights Act of 1995".

1 **SEC. 2. RIGHTS OF LAW ENFORCEMENT OFFICERS.**

2 (a) IN GENERAL.—Part H of title I of the Omnibus
3 Crime Control and Safe Streets Act of 1968 (42 U.S.C.
4 3781 et seq.) is amended by adding at the end the follow-
5 ing new section:

6 “RIGHTS OF LAW ENFORCEMENT OFFICERS

7 “SEC. 819. (a) DEFINITIONS.—In this section—

8 “ ‘disciplinary action’ means the suspension,
9 demotion, reduction in pay or other employment
10 benefit, dismissal, transfer, or similar action taken
11 against a law enforcement officer as punishment for
12 misconduct.

13 “ ‘disciplinary hearing’ means an administra-
14 tive hearing initiated by a law enforcement agency
15 against a law enforcement officer, based on probable
16 cause to believe that the officer has violated or is
17 violating a rule, regulation, or procedure related to
18 service as an officer and is subject to disciplinary ac-
19 tion.

20 “ ‘emergency suspension’ means temporary ac-
21 tion imposed by the head of the law enforcement
22 agency when that official determines that there is
23 probable cause to believe that a law enforcement of-
24 ficer—

25 “(A) has committed a felony; or

1 “(B) poses an immediate threat to the
2 safety of the officer or others or the property
3 of others.

4 “‘investigation’—

5 “(A) means the action of a law enforce-
6 ment agency, acting alone or in cooperation
7 with another agency, or a division or unit with-
8 in an agency, or the action of an individual law
9 enforcement officer, taken with regard to an-
10 other enforcement officer, if such action is
11 based on reasonable suspicion that the law en-
12 forcement officer has violated, is violating, or
13 will in the future violate a statute or ordinance,
14 or administrative rule, regulation, or procedure
15 relating to service as a law enforcement officer;
16 and

17 “(B) includes—

18 “(i) asking questions of other law en-
19 forcement officers or nonlaw enforcement
20 officers;

21 “(ii) conducting observations;

22 “(iii) evaluating reports, records, or
23 other documents; and

24 “(iv) examining physical evidence.

1 “ ‘law enforcement agency’ means a State or
2 local public agency charged by law with the duty to
3 prevent or investigate crimes or apprehend or hold
4 in custody persons charged with or convicted of
5 crimes.

6 “ ‘law enforcement officer’ and ‘officer’—

7 “(A) mean a member of a law enforcement
8 agency serving in a law enforcement position,
9 which is usually indicated by formal training
10 (regardless of whether the officer has completed
11 or been assigned to such training) and usually
12 accompanied by the power to make arrests; and

13 “(B) include—

14 “(i) a member who serves full time,
15 whether probationary or nonprobationary,
16 commissioned or noncommissioned, career
17 or noncareer, tenured or nontenured, and
18 merit or nonmerit; and

19 “(ii) the chief law enforcement officer
20 of a law enforcement agency.

21 “ ‘summary punishment’ means punishment im-
22 posed for a minor violation of a law enforcement
23 agency’s rules and regulations that does not result
24 in suspension, demotion, reduction in pay or other
25 employment benefit, dismissal, or transfer.

1 “(b) APPLICATION OF SECTION.—

2 “(1) IN GENERAL.—This section sets forth
3 rights that shall be afforded a law enforcement offi-
4 cer who is the subject of an investigation.

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

7 “(A) a criminal investigation of a law en-
8 forcement officer’s conduct; or

9 “(B) a nondisciplinary action taken in
10 good faith on the basis of a law enforcement of-
11 ficer’s employment related performance.

12 “(c) POLITICAL ACTIVITY.—Except when on duty or
13 acting in an official capacity, no law enforcement officer
14 shall be prohibited from engaging in political activity or
15 be denied the right to refrain from engaging in such activ-
16 ity.

17 “(d) RIGHTS OF LAW ENFORCEMENT OFFICERS
18 WHILE UNDER INVESTIGATION.—When a law enforce-
19 ment officer is under investigation that could lead to dis-
20 ciplinary action, the following minimum standards shall
21 apply:

22 “(1) NOTICE OF INVESTIGATION.—A law en-
23 forcement officer shall be notified of the investiga-
24 tion prior to being interviewed. Notice shall include
25 the general nature and scope of the investigation

1 and all departmental violations for which reasonable
2 suspicion exists. No investigation based on a com-
3 plaint from outside the law enforcement agency may
4 commence unless the complainant provides a signed
5 detailed statement. An investigation based on a com-
6 plaint from outside the agency shall commence with-
7 in 15 days after receipt of the complaint by the
8 agency.

9 “(2) NOTICE OF PROPOSED FINDINGS AND REC-
10 OMMENDATION.—At the conclusion of the investiga-
11 tion, the person in charge of the investigation shall
12 inform the law enforcement officer under investiga-
13 tion, in writing, of the investigative findings and any
14 recommendation for disciplinary action that the per-
15 son intends to make.

16 “(e) RIGHTS OF LAW ENFORCEMENT OFFICERS
17 PRIOR TO AND DURING QUESTIONING.—When a law en-
18 forcement officer is subjected to questioning that could
19 lead to disciplinary action, the following minimum stand-
20 ards shall apply:

21 “(1) REASONABLE HOURS.—Questioning of a
22 law enforcement officer shall be conducted at a rea-
23 sonable hour, preferably when the law enforcement
24 officer is on duty, unless exigent circumstances oth-
25 erwise require.

1 “(2) PLACE OF QUESTIONING.—Questioning of
2 the law enforcement officer shall take place at the
3 offices of the persons who are conducting the inves-
4 tigation or the place where the law enforcement offi-
5 cer reports for duty, unless the officer consents in
6 writing to being questioned elsewhere.

7 “(3) IDENTIFICATION OF QUESTIONER.—The
8 law enforcement officer under investigation shall be
9 informed, at the commencement of any questioning,
10 of the name, rank, and command of the officer con-
11 ducting the questioning.

12 “(4) SINGLE QUESTIONER.—During any single
13 period of questioning of the law enforcement officer,
14 all questions shall be asked by or through a single
15 investigator.

16 “(5) NOTICE OF NATURE OF INVESTIGATION.—
17 The law enforcement officer under investigation
18 shall be informed in writing of the nature of the in-
19 vestigation prior to any questioning.

20 “(6) REASONABLE TIME PERIOD.—Any ques-
21 tioning of a law enforcement officer in connection
22 with an investigation shall be for a reasonable period
23 of time and shall allow for reasonable periods for the
24 rest and personal necessities of the law enforcement
25 officer.

1 “(7) NO THREATS OR PROMISES.—Threats
2 against, harassment of, or promise of reward shall
3 not be made in connection with an investigation to
4 induce the answering of any question. No statement
5 given by the officer may be used in a subsequent
6 criminal proceeding unless the officer has received a
7 written grant of use and derivative use immunity or
8 transactional immunity.

9 “(8) RECORDATION.—All questioning of any
10 law enforcement officer in connection with the inves-
11 tigation shall be recorded in full, in writing or by
12 electronic device, and a copy of the transcript shall
13 be made available to the officer under investigation.

14 “(9) COUNSEL.—The law enforcement officer
15 under investigation shall be entitled to counsel (or
16 any other one person of the officer’s choice) at any
17 questioning of the officer, unless the officer consents
18 in writing to being questioned outside the presence
19 of counsel.

20 “(f) DISCIPLINARY HEARING.—

21 “(1) NOTICE OF OPPORTUNITY FOR HEAR-
22 ING.—Except in a case of summary punishment or
23 emergency suspension described in subsection (h), if
24 an investigation of a law enforcement officer results
25 in a recommendation of disciplinary action, the law

1 enforcement agency shall notify the law enforcement
2 officer that the law enforcement officer is entitled to
3 a hearing on the issues by a hearing officer or board
4 prior to the imposition of any disciplinary action.

5 “(2) REQUIREMENT OF DETERMINATION OF
6 VIOLATION.—No disciplinary action may be taken
7 unless a hearing officer or board determines, pursu-
8 ant to a fairly conducted disciplinary hearing, that
9 the law enforcement officer violated a statute, ordi-
10 nance, or published administrative rule, regulation,
11 or procedure.

12 “(3) TIME LIMIT.—No disciplinary charges may
13 be brought against a law enforcement officer unless
14 filed within 90 days after the commencement of an
15 investigation, except for good cause shown.

16 “(4) NOTICE OF FILING OF CHARGES.—The
17 law enforcement agency shall provide written, actual
18 notification to the law enforcement officer, not later
19 than 30 days after the filing of disciplinary charges,
20 of the following:

21 “(A) The date, time, and location of the
22 disciplinary hearing, which shall take place not
23 sooner than 30 days and not later than 60 days
24 after notification to the law enforcement officer

1 under investigation unless waived in writing by
2 the officer.

3 “(B) The name and mailing address of the
4 hearing officer.

5 “(C) The name, rank, and command of the
6 prosecutor, if a law enforcement officer, or the
7 name, position, and mailing address of the
8 prosecutor, if not a law enforcement officer.

9 “(5) REPRESENTATION.—During a disciplinary
10 hearing an officer shall be entitled to be represented
11 by counsel or nonattorney representative.

12 “(6) HEARING BOARD AND PROCEDURE.—(A)
13 A State shall determine the composition of a discipli-
14 nary hearing board and the procedures for a discipli-
15 nary hearing.

16 “(B) A disciplinary hearing board that includes
17 employees of the law enforcement agency of which
18 the officer who is the subject of the hearing is a
19 member shall include at least 1 law enforcement offi-
20 cer of equal or lesser rank to the officer who is the
21 subject of the hearing.

22 “(7) ACCESS TO EVIDENCE.—A law enforce-
23 ment officer who is brought before a disciplinary
24 hearing board shall be provided access to all tran-
25 scripts, records, written statements, written reports,

1 analyses, and electronically recorded information
2 pertinent to the case that—

3 “(A) contain exculpatory information;

4 “(B) are intended to support any discipli-
5 nary action; or

6 “(C) are to be introduced in the discipli-
7 nary hearing.

8 “(8) IDENTIFICATION OF WITNESSES.—The
9 disciplinary advocate for the law enforcement agency
10 of which the officer who is the subject of the hearing
11 is a member shall notify the law enforcement officer,
12 or his attorney if he is represented by counsel, not
13 later than 15 days prior to the hearing, of the name
14 and addresses of all witnesses for the law enforce-
15 ment agency.

16 “(9) COPY OF INVESTIGATIVE FILE.—The dis-
17 ciplinary advocate for the law enforcement agency of
18 which the officer who is the subject of the hearing
19 is a member shall provide to the law enforcement of-
20 ficer, at the law enforcement officer’s request, not
21 later than 15 days prior to the hearing, a copy of
22 the investigative file, including all exculpatory and
23 inculpatory information but excluding confidential
24 sources.

1 “(10) EXAMINATION OF PHYSICAL EVI-
2 DENCE.—The disciplinary advocate for the law en-
3 forcement agency of which the officer who is the
4 subject of the hearing is a member shall notify the
5 law enforcement officer, at the officer’s request, not
6 later than 15 days prior to the hearing, of all phys-
7 ical, nondocumentary evidence, and provide reason-
8 able date, time, place, and manner for the officer to
9 examine such evidence at least 10 days prior to the
10 hearing.

11 “(11) SUMMONSES.—The hearing board shall
12 have the power to issue summonses to compel testi-
13 mony of witnesses and production of documentary
14 evidence. If confronted with a failure to comply with
15 a summons, the hearing officer or board may peti-
16 tion a court to issue an order, with failure to comply
17 being subject to contempt of court.

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

23 “(13) RECORDATION.—All aspects of a discipli-
24 nary hearing, including prehearing motions, shall be
25 recorded by audio tape, video tape, or transcription.

1 “(14) SEQUESTRATION OF WITNESSES.—Either
2 side in a disciplinary hearing may move for and be
3 entitled to sequestration of witnesses.

4 “(15) TESTIMONY UNDER OATH.—The hearing
5 officer or board shall administer an oath or affirma-
6 tion to each witness, who shall testify subject to the
7 applicable laws of perjury.

8 “(16) VERDICT ON EACH CHARGE.—At the con-
9 clusion of all the evidence, and after oral argument
10 from both sides, the hearing officer or board shall
11 deliberate and render a verdict on each charge.

12 “(17) BURDEN OF PERSUASION.—The prosecu-
13 tor’s burden of persuasion shall be by clear and con-
14 vincing evidence as to each charge involving false
15 representation, fraud, dishonesty, deceit, or criminal
16 behavior and by a preponderance of the evidence as
17 to all other charges.

18 “(18) FINDING OF NOT GUILTY.—If the law en-
19 forcement officer is found not guilty of the discipli-
20 nary violations, the matter is concluded and no dis-
21 ciplinary action may be taken.

22 “(19) FINDING OF GUILTY.—If the law enforce-
23 ment officer is found guilty, the hearing officer or
24 board shall make a written recommendation of a
25 penalty. The sentencing authority may not impose

1 greater than the penalty recommended by the hear-
2 ing officer or board.

3 “(20) APPEAL.—A law enforcement officer may
4 appeal from a final decision of a law enforcement
5 agency to a court to the extent available in any
6 other administrative proceeding, in accordance with
7 the applicable State law.

8 “(g) WAIVER OF RIGHTS.—A law enforcement officer
9 may waive any of the rights guaranteed by this section
10 subsequent to the time that the officer has been notified
11 that the officer is under investigation. Such a waiver shall
12 be in writing and signed by the officer.

13 “(h) SUMMARY PUNISHMENT AND EMERGENCY SUS-
14 PENSION.—

15 “(1) IN GENERAL.—This section does not pre-
16 clude a State from providing for summary punish-
17 ment or emergency suspension.

18 “(2) HEALTH BENEFITS.—An emergency sus-
19 pension shall not affect or infringe on the health
20 benefits of a law enforcement officer or the officer’s
21 dependents.

22 “(i) RETALIATION FOR EXERCISING RIGHTS.—There
23 shall be no penalty or threat of penalty against a law en-
24 forcement officer for the exercise of the officer’s rights
25 under this section.

1 “(j) OTHER REMEDIES NOT IMPAIRED.—Nothing in
2 this section shall be construed to impair any other legal
3 right or remedy that a law enforcement officer may have
4 as a result of a constitution, statute, ordinance, regula-
5 tion, collective bargaining agreement or other sources of
6 rights.

7 “(k) DECLARATORY OR INJUNCTIVE RELIEF.—A law
8 enforcement officer who is being denied any right afforded
9 by this section may petition a State court for declaratory
10 or injunctive relief to prohibit the law enforcement agency
11 from violating such right.

12 “(l) PROHIBITION OF ADVERSE MATERIAL IN OFFI-
13 CER’S FILE.—A law enforcement agency shall not insert
14 any adverse material into the file of any law enforcement
15 officer, or possess or maintain control over any adverse
16 material in any form within the law enforcement agency,
17 unless the officer has had an opportunity to review and
18 comment in writing on the adverse material.

19 “(m) DISCLOSURE OF PERSONAL ASSETS.—A law
20 enforcement officer shall not be required or requested to
21 disclose any item of the officer’s personal property, in-
22 come, assets, sources of income, debts, personal or domes-
23 tic expenditures (including those of any member of the of-
24 ficer’s household), unless—

1 “(1) the information is necessary to the inves-
2 tigation of a violation of any Federal, State or local
3 law, rule, or regulation with respect to the perform-
4 ance of official duties; and

5 “(2) such disclosure is required by Federal,
6 State, or local law.

7 “(n) STATES’ RIGHTS.—This section does not pre-
8 empt State laws in effect on the date of enactment of this
9 Act that confer rights that equal or exceed the rights and
10 coverage afforded by this section. This section shall not
11 be a bar to the enactment of a police officer’s bill of rights,
12 or similar legislation, by any State. A State law which con-
13 fers fewer rights or provides less protection than this sec-
14 tion shall be preempted by this section.

15 “(o) MUTUALLY AGREED UPON COLLECTIVE BAR-
16 GAINING AGREEMENTS.—This section does not preempt
17 existing mutually agreed upon collective bargaining agree-
18 ments in effect on the date of enactment of this Act that
19 are substantially similar to the rights and coverage af-
20 forded under this section.”.

21 (b) TECHNICAL AMENDMENT.—The table of contents
22 of title I of the Omnibus Crime Control and Safe Streets
23 Act of 1968 (42 U.S.C. preceding 3701) is amended by
24 inserting after the item relating to section 818 the follow-
25 ing new item:

“Sec. 819. Rights of law enforcement officers.”.

