

105TH CONGRESS
1ST SESSION

S. 348

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 25, 1997

Mr. McCONNELL (for himself, Mr. BIDEN, and Mr. LEAHY) 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 1997”.

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:

6 **“SEC. 820. RIGHTS OF LAW ENFORCEMENT OFFICERS.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) DISCIPLINARY ACTION.—The term ‘dis-
9 ciplinary action’ means the suspension, demotion, re-
10 duction in pay or other employment benefit, dismis-
11 sal, transfer, or similar action taken against a law
12 enforcement officer as punishment for misconduct.

13 “(2) DISCIPLINARY HEARING.—The term ‘dis-
14 ciplinary hearing’ means an administrative hearing
15 initiated by a law enforcement agency against a law
16 enforcement officer, based on probable cause to be-
17 lieve that the officer has violated or is violating a
18 rule, regulation, or procedure related to service as an
19 officer and is subject to disciplinary action.

20 “(3) EMERGENCY SUSPENSION.—The term
21 ‘emergency suspension’ means temporary action im-
22 posed by the head of the law enforcement agency if
23 that official determines that there is probable cause
24 to believe that a law enforcement officer—

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 “(4) INVESTIGATION.—The term ‘investiga-
 5 tion’—

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

18 “(B) includes—

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

22 “(ii) conducting observations;

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

25 “(iv) examining physical evidence.

1 “(5) LAW ENFORCEMENT AGENCY.—The term
 2 ‘law enforcement agency’ means a State or local
 3 public agency charged by law with the duty to pre-
 4 vent or investigate crimes or apprehend or hold in
 5 custody persons charged with or convicted of crimi-
 6 nal offenses.

7 “(6) LAW ENFORCEMENT OFFICER.—The terms
 8 ‘law enforcement officer’ and ‘officer’—

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

16 “(B) include—

17 “(i) a member who serves full-time,
 18 whether probationary or nonprobationary,
 19 commissioned or noncommissioned, career
 20 or noncareer, tenured or nontenured, and
 21 merit or nonmerit; and

22 “(ii) the chief law enforcement officer
 23 of a law enforcement agency.

24 “(7) SUMMARY PUNISHMENT.—The term ‘sum-
 25 mary punishment’ means punishment imposed for a

1 minor violation of a rule, regulation, or procedure of
 2 a law enforcement agency that does not result in
 3 suspension, demotion, reduction in pay or other em-
 4 ployment benefit, dismissal, or transfer.

5 “(b) APPLICATION OF SECTION.—

6 “(1) IN GENERAL.—This section sets forth
 7 rights that shall be afforded any law enforcement of-
 8 ficer who is the subject of an investigation.

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

11 “(A) a criminal investigation of the con-
 12 duct of a law enforcement officer; or

13 “(B) a nondisciplinary action taken in
 14 good faith on the basis of the employment relat-
 15 ed performance of a law enforcement officer.

16 “(c) POLITICAL ACTIVITY.—Except if on duty or act-
 17 ing in an official capacity, no law enforcement officer shall
 18 be prohibited from engaging in political activity or be de-
 19 nied the right to refrain from engaging in such activity.

20 “(d) RIGHTS OF LAW ENFORCEMENT OFFICERS
 21 UNDER INVESTIGATION.—If a law enforcement officer is
 22 under investigation that could lead to disciplinary action,
 23 each of the following minimum standards shall apply:

1 “(1) NOTICE OF INVESTIGATION.—A law en-
2 forcement officer shall be notified of the investiga-
3 tion within a reasonable time after the commence-
4 ment of the investigation. Notice shall include the
5 general nature and scope of the investigation and all
6 departmental violations for which reasonable sus-
7 picion exists. No investigation based on a complaint
8 from outside the law enforcement agency may com-
9 mence unless the complainant provides a signed de-
10 tailed statement. An investigation based on a com-
11 plaint from outside the agency shall commence not
12 later than 15 days after receipt of the complaint by
13 the agency.

14 “(2) NOTICE OF INVESTIGATIVE FINDINGS AND
15 RECOMMENDATION FOR DISCIPLINARY ACTION.—At
16 the conclusion of the investigation, the person in
17 charge of the investigation shall inform the law en-
18 forcement officer under investigation, in writing, of
19 the investigative findings and any recommendation
20 for disciplinary action that the person intends to
21 make.

22 “(e) RIGHTS OF LAW ENFORCEMENT OFFICERS BE-
23 FORE AND DURING QUESTIONING.—If a law enforcement

1 officer is subjected to questioning that could lead to dis-
2 ciplinary action, each of the following minimum standards
3 shall apply:

4 “(1) REASONABLE HOURS.—Questioning of a
5 law enforcement officer shall be conducted at a rea-
6 sonable hour, preferably during the time that the
7 law enforcement officer is on duty, unless exigent
8 circumstances otherwise require.

9 “(2) PLACE OF QUESTIONING.—Questioning of
10 the law enforcement officer shall take place at the
11 offices of the persons who are conducting the inves-
12 tigation or the place where the law enforcement offi-
13 cer reports for duty, unless the officer consents in
14 writing to being questioned elsewhere.

15 “(3) IDENTIFICATION OF QUESTIONER.—The
16 law enforcement officer under investigation shall be
17 informed, at the commencement of any questioning,
18 of the name, rank, and command of the officer con-
19 ducting the questioning.

20 “(4) SINGLE QUESTIONER.—During any single
21 period of questioning of the law enforcement officer,
22 all questions shall be asked by or through a single
23 investigator.

24 “(5) NOTICE OF NATURE OF INVESTIGATION.—
25 The law enforcement officer under investigation

1 shall be informed in writing of the nature of the in-
2 vestigation not less than 72 hours before any ques-
3 tioning.

4 “(6) REASONABLE TIME PERIOD.—Any ques-
5 tioning of a law enforcement officer in connection
6 with an investigation shall be for a reasonable period
7 of time and shall allow for reasonable periods for the
8 rest and personal necessities of the law enforcement
9 officer.

10 “(7) NO THREATS OR PROMISES.—Threats
11 against, harassment of, or promise of reward shall
12 not be made in connection with an investigation to
13 induce the answering of any question. No statement
14 given by the officer may be used in a subsequent
15 criminal proceeding unless the officer has received a
16 written grant of use and derivative use immunity or
17 transactional immunity.

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

23 “(9) COUNSEL.—The law enforcement officer
24 under investigation shall be entitled to counsel (or
25 any other one person of the officer’s choice) during

1 any questioning of the officer, unless the officer con-
2 sents in writing to being questioned outside the pres-
3 ence of counsel.

4 “(f) DISCIPLINARY HEARING.—

5 “(1) NOTICE OF OPPORTUNITY FOR HEAR-
6 ING.—Except in a case of summary punishment or
7 emergency suspension described in subsection (h), if
8 an investigation of a law enforcement officer results
9 in a recommendation of disciplinary action, the law
10 enforcement agency shall notify the law enforcement
11 officer that the law enforcement officer is entitled to
12 a hearing on the issue by a hearing officer or board
13 before the imposition of any disciplinary action.

14 “(2) REQUIREMENT OF DETERMINATION OF
15 VIOLATION.—No disciplinary action may be taken
16 unless a hearing officer or board determines, pursu-
17 ant to a fairly conducted disciplinary hearing, that
18 the law enforcement officer violated a statute, ordi-
19 nance, or published administrative rule, regulation,
20 or procedure.

21 “(3) TIME LIMIT.—No disciplinary charges may
22 be brought against a law enforcement officer unless
23 filed not later than 90 days after the commencement
24 of an investigation, except for good cause shown.

1 “(4) NOTICE OF FILING OF CHARGES.—The
2 law enforcement agency shall provide written, actual
3 notification to the law enforcement officer, not later
4 than 30 days after the filing of disciplinary charges,
5 of the following:

6 “(A) DATE, TIME, AND LOCATION OF
7 HEARING.—The date, time, and location of the
8 disciplinary hearing, which shall take place not
9 sooner than 30 days and not later than 60 days
10 after notification to the law enforcement officer
11 under investigation unless waived in writing by
12 the officer.

13 “(B) INFORMATION RELATING TO HEAR-
14 ING OFFICER.—The full name and mailing ad-
15 dress of the hearing officer.

16 “(C) INFORMATION RELATING TO PROS-
17 ECUTOR.—The name, rank, and command of
18 the prosecutor, if a law enforcement officer, or
19 the name, position, and mailing address of the
20 prosecutor, if not a law enforcement officer.

21 “(5) REPRESENTATION.—During a disciplinary
22 hearing, an officer shall be entitled to be represented
23 by counsel or other representative.

24 “(6) HEARING BOARD AND PROCEDURE.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), a State shall determine the composi-
3 tion of a disciplinary hearing board and the
4 procedures for a disciplinary hearing.

5 “(B) MEMBERSHIP.—A disciplinary hear-
6 ing board that includes employees of the law
7 enforcement agency of which the officer who is
8 the subject of the hearing is a member shall in-
9 clude not less than 1 law enforcement officer of
10 equal or lesser rank to the officer who is the
11 subject of the hearing.

12 “(7) ACCESS TO EVIDENCE.—A law enforce-
13 ment officer who is brought before a disciplinary
14 hearing board shall be provided access to all tran-
15 scripts, records, written statements, written reports,
16 analyses, and electronically recorded information
17 pertinent to the case that—

18 “(A) contain exculpatory information;

19 “(B) are intended to support any discipli-
20 nary action; or

21 “(C) are to be introduced in the discipli-
22 nary hearing.

23 “(8) IDENTIFICATION OF WITNESSES.—The
24 disciplinary advocate for the law enforcement agency
25 of which the officer who is the subject of the hearing

1 is a member shall notify the law enforcement officer,
2 or his attorney if he is represented by counsel, not
3 later than 15 days before the hearing, of the name
4 and addresses of all witnesses for the law enforce-
5 ment agency.

6 “(9) COPY OF INVESTIGATIVE FILE.—The dis-
7 ciplinary advocate for the law enforcement agency of
8 which the officer who is the subject of the hearing
9 is a member shall provide to the law enforcement of-
10 ficer, upon the request of the law enforcement offi-
11 cer, not later than 15 days before the hearing, a
12 copy of the investigative file, including all excul-
13 patory and inculpatory information, except that the
14 law enforcement agency may exclude confidential
15 sources, unless the law enforcement officer is enti-
16 tled to such sources under subparagraph (A), (B), or
17 (C) of paragraph (7).

18 “(10) EXAMINATION OF PHYSICAL EVI-
19 DENCE.—The disciplinary advocate for the law en-
20 forcement agency of which the officer who is the
21 subject of the hearing is a member shall notify the
22 law enforcement officer, at the request of the officer,
23 not later than 15 days before the hearing, of all
24 physical, nondocumentary evidence, and provide rea-
25 sonable date, time, place, and manner for the officer

1 to examine such evidence not less than 10 days be-
2 fore the hearing.

3 “(11) SUMMONSES.—The hearing board shall
4 have the power to issue summonses to compel testi-
5 mony of witnesses and production of documentary
6 evidence. If confronted with a failure to comply with
7 a summons, the hearing officer or board may peti-
8 tion a court to issue an order, with failure to comply
9 being subject to contempt of court.

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

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

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

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

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

5 “(17) BURDEN OF PERSUASION.—The burden
6 of persuasion of the prosecutor shall be by clear and
7 convincing evidence as to each charge involving false
8 representation, fraud, dishonesty, deceit, or criminal
9 behavior and by a preponderance of the evidence as
10 to all other charges.

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

15 “(19) FINDING OF GUILTY.—If the law enforce-
16 ment officer is found guilty, the hearing officer or
17 board shall make a written recommendation of a
18 penalty. The sentencing authority may not impose
19 greater than the penalty recommended by the hear-
20 ing officer or board.

21 “(20) APPEAL.—A law enforcement officer may
22 appeal from a final decision of a law enforcement
23 agency to a court to the extent available in any
24 other administrative proceeding, in accordance with
25 the applicable State law.

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

6 “(h) SUMMARY PUNISHMENT AND EMERGENCY SUS-
7 PENSION.—

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

11 “(2) HEALTH BENEFITS.—An emergency sus-
12 pension shall not affect or infringe on the health
13 benefits of a law enforcement officer or any depend-
14 ent of the officer.

15 “(i) RETALIATION FOR EXERCISING RIGHTS.—There
16 shall be no penalty or threat of penalty against a law en-
17 forcement officer for the exercise of the rights of the offi-
18 cer under this section.

19 “(j) OTHER REMEDIES NOT IMPAIRED.—Nothing in
20 this section shall be construed to impair any other legal
21 right or remedy that a law enforcement officer may have
22 as a result of a constitution, statute, ordinance, regula-
23 tion, collective bargaining agreement or other sources of
24 rights.

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

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

13 “(m) DISCLOSURE OF PERSONAL ASSETS.—A law
14 enforcement officer shall not be required or requested to
15 disclose any item of the officer’s personal property, in-
16 come, assets, sources of income, debts, or personal or do-
17 mestic expenditures (including those of any member of the
18 officer’s household), unless—

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

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

1 “(n) STATES’ RIGHTS.—This section does not pre-
 2 empt State laws in existence on the effective date of this
 3 section that confer rights that equal or exceed the rights
 4 and coverage afforded by this section. This section shall
 5 not be a bar to the enactment of a police officer’s bill of
 6 rights, or similar legislation, by any State. A State law
 7 that confers fewer rights or provides less protection to law
 8 enforcement officers than this section shall be preempted
 9 by this section.

10 “(o) MUTUALLY AGREED UPON COLLECTIVE BAR-
 11 GAINING AGREEMENTS.—This section does not preempt
 12 any mutually agreed upon collective bargaining agreement
 13 in existence on the effective date of this section that is
 14 substantially similar to the rights and coverage afforded
 15 under this section.

16 “(p) EFFECTIVE DATE.—This section shall take ef-
 17 fect with respect to each State on the earlier of—

18 “(1) 2 years after the date of enactment of the
 19 Law Enforcement Officers’ Bill of Rights Act of
 20 1997; or

21 “(2) upon the conclusion of the second legisla-
 22 tive session of the State that begins on or after the
 23 date of enactment of the Law Enforcement Officers’
 24 Bill of Rights Act of 1997.”.

1 (b) TECHNICAL AMENDMENT.—The table of contents
2 of title I of the Omnibus Crime Control and Safe Streets
3 Act of 1968 (42 U.S.C. preceding 3701) is amended by
4 inserting after the item relating to section 819 the follow-
5 ing:

“Sec. 820. Rights of law enforcement officers.”.

