

108TH CONGRESS  
1ST SESSION

# S. 1277

To amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide standards and procedures to guide both 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.

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## IN THE SENATE OF THE UNITED STATES

JUNE 18, 2003

Mr. BIDEN (for himself, Mr. McCONNELL, Mr. BUNNING, and Mr. GRAHAM of South Carolina) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide standards and procedures to guide both 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       geted for their labor organization activities or for  
2       their aggressive enforcement of the laws, demor-  
3       alizing many rank and file officers in communities  
4       and States;

5               (3) unfair treatment of officers has potentially  
6       serious long-term consequences for law enforcement  
7       by potentially deterring or otherwise preventing offi-  
8       cers from carrying out their duties and responsibil-  
9       ities effectively and fairly;

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

21              (5) there are serious implications for the public  
22       safety of the citizens and residents of the United  
23       States which threatens the domestic tranquility of  
24       the United States because of a lack of statutory pro-  
25       tections to ensure—

1 (i) the due process and political rights of  
2 law enforcement officers;

3 (ii) fair and thorough internal investiga-  
4 tions and interrogations of and disciplinary pro-  
5 ceedings against law enforcement officers; and

6 (iii) effective procedures for receipt, review,  
7 and investigation of complaints against officers,  
8 fair to both officers and complainants; and

9 (6) resolving these disputes and problems and  
10 preventing the disruption of vital police services is  
11 essential to the well-being of the United States and  
12 the domestic tranquility of the Nation.

13 (b) DECLARATION OF POLICY.—Congress declares  
14 that it is the purpose of this Act and the policy of the  
15 United States to—

16 (1) protect the due process and political rights  
17 of State and local law enforcement officers and en-  
18 sure equality and fairness of treatment among such  
19 officers;

20 (2) provide continued police protection to the  
21 general public;

22 (3) provide for the general welfare and ensure  
23 domestic tranquility; and

24 (4) prevent any impediments to the free flow of  
25 commerce, under the rights guaranteed under the

1 United States Constitution and Congress' authority  
2 thereunder.

3 **SEC. 3. DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS**  
4 **OF OFFICERS.**

5 (a) IN GENERAL.—Part H of title I of the Omnibus  
6 Crime Control and Safe Streets Act of 1968 (42 U.S.C.  
7 3781 et seq.) is amended by adding at the end the fol-  
8 lowing:

9 **“SEC. 820. DISCIPLINE, ACCOUNTABILITY, AND DUE PROC-**  
10 **ESS OF STATE AND LOCAL LAW ENFORCE-**  
11 **MENT OFFICERS.**

12 “(a) DEFINITIONS.—In this section:

13 “(1) DISCIPLINARY ACTION.—The term ‘dis-  
14 ciplinary action’ means any adverse personnel action,  
15 including suspension, reduction in pay, rank, or  
16 other employment benefit, dismissal, transfer, reas-  
17 signment, unreasonable denial of secondary employ-  
18 ment, or similar punitive action taken against a law  
19 enforcement officer.

20 “(2) DISCIPLINARY HEARING.—The term ‘dis-  
21 ciplinary hearing’ means an administrative hearing  
22 initiated by a law enforcement agency against a law  
23 enforcement officer, based on an alleged violation of  
24 law, that, if proven, would subject the law enforce-  
25 ment officer to disciplinary action.

1           “(3) EMERGENCY SUSPENSION.—The term  
2           ‘emergency suspension’ means the temporary action  
3           by a law enforcement agency of relieving a law en-  
4           forcement officer from the active performance of law  
5           enforcement duties without a reduction in pay or  
6           benefits when the law enforcement agency, or an of-  
7           ficial within that agency, determines that there is  
8           probable cause, based upon the conduct of the law  
9           enforcement officer, to believe that the law enforce-  
10          ment officer poses an immediate threat to the safety  
11          of that officer or others or the property of others.

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

14                   “(A) means an action taken to determine  
15                   whether a law enforcement officer violated a  
16                   law by a public agency or a person employed by  
17                   a public agency, acting alone or in cooperation  
18                   with or at the direction of another agency, or  
19                   a division or unit within another agency, re-  
20                   gardless of a denial by such an agency that any  
21                   such action is not an investigation; and

22                   “(B) includes—

23                           “(i) asking questions of any other law  
24                           enforcement officer or non-law enforcement  
25                           officer;

1 “(ii) conducting observations;

2 “(iii) reviewing and evaluating re-  
3 ports, records, or other documents; and

4 “(iv) examining physical evidence.

5 “(5) LAW ENFORCEMENT OFFICER.—The terms  
6 ‘law enforcement officer’ and ‘officer’ have the  
7 meaning given the term ‘law enforcement officer’ in  
8 section 1204, except the term does not include a law  
9 enforcement officer employed by the United States,  
10 or any department, agency, or instrumentality there-  
11 of.

12 “(6) PERSONNEL RECORD.—The term ‘per-  
13 sonnel record’ means any document, whether in writ-  
14 ten or electronic form and irrespective of location,  
15 that has been or may be used in determining the  
16 qualifications of a law enforcement officer for em-  
17 ployment, promotion, transfer, additional compensa-  
18 tion, termination or any other disciplinary action.

19 “(7) PUBLIC AGENCY AND LAW ENFORCEMENT  
20 AGENCY.—The terms ‘public agency’ and ‘law en-  
21 forcement agency’ each have the meaning given the  
22 term ‘public agency’ in section 1204, except the  
23 terms do not include the United States, or any de-  
24 partment, agency, or instrumentality thereof.

1           “(8) SUMMARY PUNISHMENT.—The term ‘sum-  
2           mary punishment’ means punishment imposed—

3                   “(A) for a violation of law that does not  
4                   result in any disciplinary action; or

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

1           “(B) a nondisciplinary action taken in  
2           good faith on the basis of the employment re-  
3           lated performance of a law enforcement officer.

4           “(c) POLITICAL ACTIVITY.—

5           “(1) RIGHT TO ENGAGE OR NOT TO ENGAGE IN  
6           POLITICAL ACTIVITY.—Except when on duty or act-  
7           ing in an official capacity, a law enforcement officer  
8           shall not be prohibited from engaging in political ac-  
9           tivity or be denied the right to refrain from engaging  
10          in political activity.

11          “(2) RIGHT TO RUN FOR ELECTIVE OFFICE.—

12          A law enforcement officer shall not be—

13                 “(A) prohibited from being a candidate for  
14                 an elective office or from serving in such an  
15                 elective office, solely because of the status of  
16                 the officer as a law enforcement officer; or

17                 “(B) required to resign or take an unpaid  
18                 leave from employment with a law enforcement  
19                 agency to be a candidate for an elective office  
20                 or to serve in an elective office, unless such  
21                 service is determined to be in conflict with or  
22                 incompatible with service as a law enforcement  
23                 officer.

24          “(3) ADVERSE PERSONNEL ACTION.—An action  
25          by a public agency against a law enforcement officer,

1 including requiring the officer to take unpaid leave  
2 from employment, in violation of this subsection  
3 shall be considered an adverse personnel action with-  
4 in the meaning of subsection (a)(1).

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

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

12 “(A) authorizes persons from outside the  
13 law enforcement agency to submit written com-  
14 plaints about a law enforcement officer 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 outside the law enforcement  
8 agency shall commence not later than 15 days  
9 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 does 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) COMPLAINANT OR VICTIM CONFLICT OF  
2 INTEREST.—The complainant or victim of the al-  
3 leged violation of law giving rise to an investigation  
4 under this subsection may not conduct or supervise  
5 the investigation or serve as an investigator.

6           “(e) NOTICE OF INVESTIGATION.—

7           “(1) IN GENERAL.—Any law enforcement offi-  
8 cer who is the subject of an investigation shall be  
9 notified of the investigation 24 hours before the  
10 commencement of questioning or to otherwise being  
11 required to provide information to an investigating  
12 agency.

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

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

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

19           “(C) a description of each violation of law  
20 alleged in the complaint for which suspicion ex-  
21 ists that the officer may have engaged in con-  
22 duct that may subject the officer to disciplinary  
23 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           “(f) 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.—Any  
10          questioning of a law enforcement officer under inves-  
11          tigation shall be conducted at a reasonable time  
12          when the officer is on duty, unless exigent cir-  
13          cumstances compel more immediate questioning, or  
14          the officer agrees in writing to being questioned at  
15          a different time, subject to the requirements of sub-  
16          sections (e) and (f)(1).

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

21                 “(A) at the office of the individual con-  
22                 ducting the investigation on behalf of the law  
23                 enforcement agency employing the officer under  
24                 investigation; or

1           “(B) the place at which the officer under  
2           investigation reports for duty.

3           “(4) IDENTIFICATION OF QUESTIONER.—Before  
4           the commencement of any questioning, a law en-  
5           forcement officer under investigation shall be in-  
6           formed of—

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

10          “(B) the relationship between the indi-  
11          vidual conducting the questioning and the law  
12          enforcement agency employing the officer under  
13          investigation.

14          “(5) SINGLE QUESTIONER.—During any single  
15          period of questioning of a law enforcement officer  
16          under investigation, each question shall be asked by  
17          or through 1 individual.

18          “(6) REASONABLE TIME PERIOD.—Any ques-  
19          tioning of a law enforcement officer under investiga-  
20          tion shall be for a reasonable period of time and  
21          shall allow reasonable periods for the rest and per-  
22          sonal necessities of the officer and the counsel or  
23          representative of the officer, if such person is  
24          present.

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

3           “(A) IN GENERAL.—Except as provided in  
4 subparagraph (B), no threat against, false or  
5 misleading statement to, harassment of, or  
6 promise of reward to a law enforcement officer  
7 under investigation shall be made to induce the  
8 officer to answer any question, give any state-  
9 ment, or otherwise provide information.

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

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

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

24           “(8) RECORDING.—

1           “(A) IN GENERAL.—All questioning of a  
2 law enforcement officer under an investigation  
3 shall be recorded in full, in writing or by elec-  
4 tronic device, and a copy of the transcript shall  
5 be provided to the officer under investigation  
6 before any subsequent period of questioning or  
7 the filing of any charge against that officer.

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

15           “(9) USE OF HONESTY TESTING DEVICES PRO-  
16 HIBITED.—No law enforcement officer under inves-  
17 tigation may be compelled to submit to the use of  
18 a lie detector, as defined in section 2 of the Em-  
19 ployee Polygraph Protection Act of 1988 (29 U.S.C.  
20 2001).

21           “(g) NOTICE OF INVESTIGATIVE FINDINGS AND DIS-  
22 CIPLINARY RECOMMENDATION AND OPPORTUNITY TO  
23 SUBMIT A WRITTEN RESPONSE.—

24           “(1) NOTICE.—Not later than 30 days after the  
25 conclusion of an investigation under this section, the

1 person in charge of the investigation or the designee  
2 of that person shall notify the law enforcement offi-  
3 cer who was the subject of the investigation, in writ-  
4 ing, of the investigative findings and any rec-  
5 ommendations for disciplinary action.

6 “(2) OPPORTUNITY TO SUBMIT WRITTEN RE-  
7 SPONSE.—

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

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

24 “(h) DISCIPLINARY HEARING.—

1           “(1) NOTICE OF OPPORTUNITY FOR HEAR-  
2           ING.—Except in a case of summary punishment or  
3           emergency suspension (subject to subsection (k)),  
4           before the imposition of any disciplinary action the  
5           law enforcement agency shall notify the officer that  
6           the officer is entitled to a due process hearing by an  
7           independent and impartial hearing officer or board.

8           “(2) REQUIREMENT OF DETERMINATION OF  
9           VIOLATION.—No disciplinary action may be taken  
10          against a law enforcement officer unless an inde-  
11          pendent and impartial hearing officer or board de-  
12          termines, after a hearing and in accordance with the  
13          requirements of this subsection, that the law en-  
14          forcement officer committed a violation of law.

15          “(3) TIME LIMIT.—No disciplinary charge may  
16          be brought against a law enforcement officer un-  
17          less—

18                 “(A) the charge is filed not later than the  
19                 earlier of—

20                         “(i) 1 year after the date on which the  
21                         law enforcement agency filing the charge  
22                         had knowledge or reasonably should have  
23                         had knowledge of an alleged violation of  
24                         law; or

1                   “(ii) 90 days after the commencement  
2                   of an investigation; or

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

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

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

22                  “(B) the name and mailing address of the  
23                  independent and impartial hearing officer, or  
24                  the names and mailing addresses of the inde-

1 pendent and impartial hearing board members;  
2 and

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

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

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

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

23 “(i) contain exculpatory information;

24 “(ii) are intended to support any dis-  
25 ciplinary action; or

1                   “(iii) are to be introduced in the dis-  
2                   ciplinary hearing.

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

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

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

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

1 enforcement agency employing the law enforcement  
2 officer.

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

7 “(A) the right to be represented by counsel  
8 or a representative;

9 “(B) the right to confront and examine all  
10 witnesses against the officer; and

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

13 “(9) HEARING BOARD AND PROCEDURE.—

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

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

21 “(ii) appoint an independent and im-  
22 partial hearing officer; and

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

1           “(B) PEER REPRESENTATION ON DISCIPLI-  
2 NARY HEARING BOARD.—A disciplinary hearing  
3 board that includes employees of the law en-  
4 forcement agency employing the law enforce-  
5 ment officer who is the subject of the hearing,  
6 shall include not less than 1 law enforcement  
7 officer of equal or lesser rank to the officer who  
8 is the subject of the hearing.

9           “(10) SUMMONSES AND SUBPOENAS.—

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

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

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

17           “(II) the law enforcement officer  
18 who is the subject of the hearing; and

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

1           “(B) EFFECT OF FAILURE TO COMPLY  
2 WITH SUMMONS OR SUBPOENA.—With respect  
3 to any failure to comply with a summons or a  
4 subpoena issued under subparagraph (A)—

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

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

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

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

21           “(11) CLOSED HEARING.—A disciplinary hear-  
22 ing shall be closed to the public unless the law en-  
23 forcement officer who is the subject of the hearing  
24 requests, in writing, that the hearing be open to  
25 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 audio tape, video tape, 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 of law,  
23 as to 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;

1           “(B) the rule, regulation, order, or proce-  
2           dure that the officer who is the subject of the  
3           charge allegedly violated is reasonable;

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

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

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

18          “(18) NO COMMISSION OF A VIOLATION.—If the  
19          officer who is the subject of the disciplinary hearing  
20          is found not to have committed the alleged viola-  
21          tion—

22                  “(A) the matter is concluded;

23                  “(B) no disciplinary action may be taken  
24          against the officer;

1           “(C) the personnel file of that officer shall  
2 not contain any reference to the charge for  
3 which the officer was found not guilty; and

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

13           “(19) COMMISSION OF A VIOLATION.—

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

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

1           “(20) APPEAL.—Any officer who has been  
2 found to have committed an alleged violation may  
3 appeal from a final decision of a hearing officer or  
4 hearing board to a court of competent jurisdiction or  
5 to an independent neutral arbitrator to the extent  
6 available in any other administrative proceeding  
7 under applicable State or local law, or a collective  
8 bargaining agreement.

9           “(i) WAIVER OF RIGHTS.—

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

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

16           “(A) in writing; and

17           “(B) signed by—

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

21           “(ii) the counsel or representative of  
22 the officer, if expressly authorized by sub-  
23 section (h).

1       “(j) SUMMARY PUNISHMENT.—Nothing in this sec-  
2 tion shall preclude a public agency from imposing sum-  
3 mary punishment.

4       “(k) EMERGENCY SUSPENSION.—Nothing in this  
5 section may be construed to preclude a law enforcement  
6 agency from imposing an emergency suspension on a law  
7 enforcement officer, except that any such suspension  
8 shall—

9               “(1) be followed by a hearing in accordance  
10 with the requirements of subsection (h); and

11               “(2) not deprive the affected officer of any pay  
12 or benefit.

13       “(l) RETALIATION FOR EXERCISING RIGHTS.—There  
14 shall be no imposition of, or threat of, disciplinary action  
15 or other penalty against a law enforcement officer for the  
16 exercise of any right provided to the officer under this sec-  
17 tion.

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

24       “(n) DECLARATORY OR INJUNCTIVE RELIEF.—A law  
25 enforcement officer who is aggrieved by a violation of, or

1 is otherwise denied any right afforded by, the Constitution  
2 of the United States, a State constitution, this section,  
3 or any administrative rule or regulation promulgated pur-  
4 suant thereto, may file suit in any Federal or State court  
5 of competent jurisdiction for declaratory or injunctive re-  
6 lief to prohibit the law enforcement agency from violating  
7 or otherwise denying such right, and such court shall have  
8 jurisdiction, for cause shown, to restrain such a violation  
9 or denial.

10 “(o) PROTECTION OF LAW ENFORCEMENT OFFICER  
11 PERSONNEL FILES.—

12 “(1) RESTRICTIONS ON ADVERSE MATERIAL  
13 MAINTAINED IN OFFICERS’ PERSONNEL RECORDS.—

14 “(A) IN GENERAL.—Unless the officer has  
15 had an opportunity to review and comment, in  
16 writing, on any adverse material included in a  
17 personnel record relating to the officer, no law  
18 enforcement agency or other governmental enti-  
19 ty may—

20 “(i) include the adverse material in  
21 that personnel record; or

22 “(ii) possess or maintain control over  
23 the adverse material in any form as a per-  
24 sonnel record within the law enforcement

1           agency or elsewhere in the control of the  
2           employing governmental entity.

3           “(B) RESPONSIVE MATERIAL.—Any re-  
4           sponsive material provided by an officer to ad-  
5           verse material included in a personnel record  
6           pertaining to the officer shall be—

7                   “(i) attached to the adverse material;

8                   and

9                   “(ii) released to any person or entity  
10           to whom the adverse material is released in  
11           accordance with law and at the same time  
12           as the adverse material is released.

13           “(2) RIGHT TO INSPECTION OF, AND RESTRIC-  
14           TIONS ON ACCESS TO INFORMATION IN, THE OFFI-  
15           CER’S OWN PERSONNEL RECORDS.—

16                   “(A) IN GENERAL.—Subject to subpara-  
17           graph (B), a law enforcement officer shall have  
18           the right to inspect all of the personnel records  
19           of the officer not less than annually.

20                   “(B) RESTRICTIONS.—A law enforcement  
21           officer shall not have access to information in  
22           the personnel records of the officer if the infor-  
23           mation—

24                   “(i) relates to the investigation of al-  
25           leged conduct that, if proven, would con-

1           stitute or have constituted a definite viola-  
2           tion of a statute providing for criminal  
3           penalties, but as to which no formal charge  
4           was brought;

5           “(ii) contains letters of reference for  
6           the officer;

7           “(iii) contains any portion of a test  
8           document other than the results;

9           “(iv) is of a personal nature about an-  
10          other officer, and if disclosure of that in-  
11          formation in non-redacted form would con-  
12          stitute a clearly unwarranted intrusion into  
13          the privacy rights of that other officer; or

14          “(v) is relevant to any pending claim  
15          brought by or on behalf of the officer  
16          against the employing agency of that offi-  
17          cer that may be discovered in any judicial  
18          or administrative proceeding between the  
19          officer and the employer of that officer.

20          “(p) STATES’ RIGHTS.—

21                 “(1) IN GENERAL.—Nothing in this section  
22          may be construed—

23                         “(A) to preempt any State or local law, or  
24                         any provision of a State or local law, in effect  
25                         on the date of enactment of the State and Local

1 Law Enforcement Discipline, Accountability,  
2 and Due Process Act of 2001, that confers a  
3 right or a protection that equals or exceeds the  
4 right or protection afforded by this section; or

5 “(B) to prohibit the enactment of any  
6 State or local law that confers a right or protec-  
7 tion that equals or exceeds a right or protection  
8 afforded by this section.

9 “(2) STATE OR LOCAL LAWS PREEMPTED.—A  
10 State or local law, or any provision of a State or  
11 local law, that confers fewer rights or provides less  
12 protection for a law enforcement officer than any  
13 provision in this section shall be preempted by this  
14 section.

15 “(q) COLLECTIVE BARGAINING AGREEMENTS.—  
16 Nothing in this section may be construed to—

17 “(1) preempt any provision in a mutually  
18 agreed-upon collective bargaining agreement, in ef-  
19 fect on the date of enactment of the State and Local  
20 Law Enforcement Discipline, Accountability, and  
21 Due Process Act of 2001, that provides for substan-  
22 tially the same or a greater right or protection af-  
23 forded under this section; or

