

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

John P. Fresolo

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to establishing a law enforcement bill of rights.

PETITION OF:

NAME:

John P. Fresolo

DISTRICT/ADDRESS:

16th Worcester

28 promise of reward shall be made as an inducement to answering any question. The employer shall not cause the
29 public safety officer under interrogation to be subjected to visits by the press or news media without his express
30 consent nor shall his home address or photograph be given to the press or news media without his express consent.
31 (f) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the
32 interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or
33 prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed
34 copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons,
35 except those which are deemed by the investigating agency to be confidential. No notes or reports which are deemed
36 to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall
37 have the right to bring his own recording device and record any and all aspects of the interrogation.
38 (g) If prior to or during the interrogation of a public safety officer it is deemed that he may be charged with a
39 criminal offense, he shall be immediately informed of his constitutional rights.
40 (h) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters which
41 are likely to result in punitive action against any public safety officer, that officer, at his request, shall have the right
42 to be represented by a representative of his choice who may be present at all times during such interrogation. The
43 representative shall not be a person subject to the same investigation. The representative shall not be required to
44 disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer
45 under investigation for noncriminal matters.
46 This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling,
47 instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any
48 other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged
49 criminal activities.
50 (i) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn
51 member of his department would not normally be sent to that location or would not normally be given that duty
52 assignment under similar circumstances.
53 (j) Upon completion of the investigation, the law enforcement officer shall be notified of the name of any witness
54 and all charges and specifications against the officer not less than 10 days prior to any hearing.
55 (k) In addition, the law enforcement officer under investigation shall be furnished with a copy of the investigatory
56 file and any exculpatory information, but excluding:
57 1. The identity of confidential sources;
58 2. Any nonexculpatory information; and
59 3. Recommendations as to charges, disposition, or punishment.
60 (l) The law enforcement officer under investigation shall be furnished with a copy of the investigatory file and the
61 exculpatory information described under subparagraph (iii) of this paragraph not less than 10 days before any
62 hearing if the officer and the officer's representative agree:
63 1. To execute a confidentiality agreement with the law enforcement agency to not disclose any of the material
64 contained in the record for any purpose other than to defend the officer; and
65 2. To pay any reasonable charge for the cost of reproducing the material involved.
66 (m) The law enforcement officer under interrogation may not be threatened with transfer, dismissal, or disciplinary
67 action.
68 (n) Unless otherwise required or conducted on a routine basis, no law enforcement officer shall be required to
69 submit to blood alcohol tests, blood, breath, or urine tests for controlled substances, polygraph examinations or
70 interrogations which specifically relate to the subject of the investigation. The results of any such test are not
71 admissible or discoverable in any criminal or civil proceeding against the law enforcement officer, when said officer
72 has been ordered to submit thereto.
73 (o) If the chief is the law enforcement officer under investigation, the chief of another law enforcement agency in
74 this State shall function as the law enforcement officer of the same rank on the hearing board.
75 1. If the chief of a State law enforcement agency is under investigation, the Governor shall appoint the chief of
76 another law enforcement agency as the law enforcement officer of the same rank on the hearing board.
77 2. If the chief of a county or municipal law enforcement agency is under investigation, the official who may appoint
78 the chief's successor shall appoint the chief of another law enforcement agency as the officer of the same rank on
79 the hearing board.
80 3. If the chief of a State law enforcement agency or the chief of a county or municipal law enforcement agency is
81 under investigation, the official who may appoint the chief's successor, or that official's designee, shall function as
82 chief for the purposes of this subtitle.
83 Section 3. (a) No evidence may be obtained, received or admitted into evidence in any proceeding of any

84 disciplinary action which violates any of the rights established by the United States Constitution or Constitution or
85 by this chapter. The tribunal may not enter any judgment or sustain any disciplinary action based on any evidence
86 obtained in violation of the officer's rights as contained in this chapter.
87 (b) Any decision, order or action taken following the hearing shall be in writing and shall be accompanied by
88 findings of fact. The findings shall consist of a concise statement upon each issue in the case. A copy of the decision
89 or order accompanying findings and conclusions along with the written action and right of appeal, if any, shall be
90 delivered or mailed promptly to the law enforcement officer or to his or her attorney or representative of record.
91 Section 4. No law enforcement officer shall be compelled to work extra duty without compensation as a penalty for
92 a disciplinary infraction. No suspension for any period of time provided in departmental rules and regulations shall
93 affect the law enforcement officer's eligibility for pension, hospitalization, medical and life insurance coverage or
94 other benefits specifically protected under his or her contract of employment. Suspension may affect time of pension
95 eligibility by contractual provision or other statutory provision. Nothing herein shall prevent any law enforcement
96 agency from requiring reimbursement by a suspended law enforcement officer of his or her employee contribution
97 to his or her benefits during his or her time of suspension.
98 Section 5. No public safety officer shall be required or requested for purposes of job assignment or other personnel
99 action to disclose any item of his property, income, assets, source of income, debts or personal or domestic
100 expenditures (including those of any member of his family or household) unless such information is obtained or
101 required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the
102 performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning
103 the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper
104 inducements may be offered.
105 Section 6. No public safety officer shall have his locker, or other space for storage that may be assigned to him
106 searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he
107 has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage
108 that are owned or leased by the employing agency.
109 Section 7. (c) Evidence which possesses probative value commonly accepted by reasonable and prudent persons in
110 the conduct of their affairs shall be admissible in evidence and given probative effect. The tribunal conducting the
111 hearing shall give effect to the rules of privilege recognized by law and exclude incompetent, irrelevant, immaterial
112 and unduly repetitious evidence. All records and documents which any party desires to use shall be offered and
113 made a part of the record. Documentary evidence may be received in the form of copies of excerpts or by
114 incorporation by reference.
115 (d) Every party shall have the right of cross-examination of witnesses who testify and may submit rebuttal evidence.
116 (e) The tribunal may take notice of judicially cognizable facts and in addition may take notice of general, technical
117 or scientific facts within its specialized knowledge. Parties shall be notified beforehand of the materials so noticed
118 by the trial board. No law enforcement officer may be adjudged guilty of any offense unless the hearing tribunal is
119 satisfied that guilt has been established by substantial evidence.
120 Section 8. A law enforcement agency may not prohibit secondary employment but may promulgate reasonable
121 regulations as to a law enforcement officer's secondary employment.
122 Section 9. The rights established by the provisions of this chapter shall not be diminished or abridged by any local
123 ordinance or collective bargaining agreement