

INVESTIGATOR'S GUIDE TO THE CALIFORNIA
PUBLIC SAFETY OFFICERS BILL OF RIGHTS ACT



INTERNAL AFFAIRS
DIVISION

BY MARTIN J. MAYER AND KEVIN JOHNSON

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CALIFORNIA
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OF RIGHTS ACT**

**BY MARTIN J. MAYER
AND
KEVIN JOHNSON**

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PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS ACT

SECTION 3300 This chapter is known, and may be cited, as the Public Safety Officers Procedural Bill of Rights Act.

As a statutory declaration:

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

SECTION 3301 PUBLIC SAFETY OFFICER DEFINED

For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4 and 830.5 of the Penal Code.

WHO IS COVERED

830.1 applies to all peace officers, e.g. Police, Sheriff, Marshals, Port Wardens, L.A. Harbor Department, District Attorney Investigators and Justice personnel.

This includes “at will” employees such as a Chief of Police and probationary peace officers.

830.2 applies to members of the Highway Patrol, National Guard, University of California Police, State University and College Police, Department of Corrections, Department of Alcoholic Beverage Control, California State Fair Police, California Inspector Generals Office, Fish and Game, Parks and Recreation and Forestry.

830.3 applies to investigators for the following; the Department of Consumer Affairs, the Medical Board of California, the Board of Dental Examiners, the California Horse Racing Board, the

Department of Motor Vehicles, the State Fire Marshal, the Food and Drug Section, the Division of Labor Standards Enforcement, the State Departments of Health Services, Social Services, Mental Health, Developmental Services, Alcohol and Drug Programs, Toxic Substance Control, Statewide Health Planning and Development, the Public Employee's Retirement System, the Department of Insurance, the Department of Housing and Community Development, Office of the Controller, Department of Corporations, Contractors' State License Board, Office of Emergency Services, the Office of the Secretary of State, the Franchise Tax Board, security personnel assigned to the California State Lottery, the Investigations Division of the Employment Development Department, Voluntary Fire Wardens and the California Science Center Security Officers.

830.31 applies to Los Angeles County Safety Police, Park Rangers, Los Angeles City General Services Department Security Officers and the Housing Authority Police.

830.32 applies to Community College and School District Police.

830.33 applies to BART Police, Harbor or Port Police, Transit Police and Airport Police.

830.34 applies to Municipal Utility District Security Officers, County Water District Security Officers and the Public Utilities Commission Security Directors.

830.35 applies to Welfare Fraud and Child Support Investigators.

830.36 applies to the Sergeant-At-Arms of each house of the Legislature, Marshals of the Supreme Court and Bailiffs of the Court of Appeal, Coordinators of Security for the Judicial Branch and Court Service Officers.

830.37 applies to members of an arson investigating unit, Voluntary Fire Wardens and Firefighter/Security Guards of the Military Department.

830.38 applies to State Hospital Officers, Department of Mental Health.

830.4 applies to members of the California National Guard, Guards and Messengers of the Treasurer's Office, Security Officers of the Department of Justice and Security Officers of Hastings College of the Law.

830.5 applies to Parole and Probation Officers, Correctional Officers and Medical Technical Assistants with the Department of Corrections.

WHO IS NOT COVERED

Reserve Peace Officers as defined in 830.6, Railroad Police as defined in 830.33(e), County Coroner as defined in 830.35(c) and temporary employees or non-sworn personnel such as academy recruits.

RIGHT TO REPRESENTATION

SECTION 3303(i)

“Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters. This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.”

SCENARIO 1:

As the on-duty Sergeant, you have just arrived on the scene of a use of force. You approach the involved officer and ask, “What happened?” The

officer tells you that he has the right to a representative under POBR and is not going to answer your questions.

WHAT YOU NEED TO KNOW:

Section 3303(i) states, “Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action... the officer shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation.” More important, the section also states, “This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer.”

In *Darvish v. City of Inglewood* (a non-published case)², Darvish was involved with three other Inglewood Police Officers and two Los Angeles County Sheriff's Deputies in the arrest of Donovan Jackson at a Thrifty Gas Station. The arrest was videotaped by a bystander and broadcast on local television news, creating a media firestorm. When the Sergeant arrived at the scene, Darvish was questioned in accordance with the police

² California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b).

department's use-of-force protocol. The Sergeant questioned Darvish to "obtain information regarding the circumstances surrounding the use of force and to document those on the department's Use of Force report."

Darvish contends that the Sergeant's planned encounter with him at the scene of the incident, the Sergeant's subsequent interview of him and the other officers, combined with the instructions to write a Miscellaneous Report of the incident were tantamount to an interrogation that would trigger the procedures and protections of Section 3303(c) and (h). Darvish contends that the Sergeant did not inform him of the nature of the investigation prior to this "interrogation" nor advise him of his constitutional rights.

Section 3303(c) provides that, "The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation."

Section 3303(h) provides that, "If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights."

Section 3303(i) provides that, "This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer." The court in *City of Los Angeles v. Superior Court*, (1997) 57 Cal. App. 4th 1506, stated, "This section was included to avoid claims that almost any communication is elevated to an investigation."

In *Darvish*, the Sergeant was conducting a routine investigation between a supervisor and a subordinate. The Sergeant did not have a complaint about police misconduct, instead was responding to a report of use of force, a routine matter. The Sergeant's duty was to investigate to ensure that the force used was not excessive and was within policy. There was no indication that the force used was excessive or out of policy. The Sergeant had no information which would lead her to conclude that any officer in particular had engaged in any misconduct that would lead to sanctions.

Therefore, the court went on to say, "Because the facts establish that the Sergeant was investigating an event, not an individual facing misconduct allegations, the on-the-scene investigation is within the 'routine' exception of Section 3303 (i)."

In *Steinert v. City of Covina*, (2006) 146 Cal App 4th, 458,

Officer Steinert's name arose as part of a routine informal audit performed by the California Department of Justice, which monitors use of its criminal records databases. The Covina Police Department learned from the Department of Justice that Officer Steinert had performed a records search on an individual and had designated the search "TRNG," signifying training. Justice Department and Covina policies precluded the use of actual records for training purposes. The Covina Police Department examined their records for the day that Officer Steinert had run the search and found that Officer Steinert had taken a vandalism report at approximately the same time that the record search was conducted. Officer Steinert's supervisor believed the criminal history search was appropriate and the only problem was the "user error" of designating the search as for training rather than entering the crime report number associated with the vandalism report.

Later that same morning, the supervisor called Officer Steinert into the office. Officer Steinert remembered taking the vandalism report and told the supervisor that the victim had in fact, mentioned a person as a possible suspect (named ran by Officer Steinert) when making the report. The supervisor instructed Steinert to make sure to include names as "mentioned persons" in the crime report, and to use a case number rather than "TRNG" when conducting record searches on individuals. At the end of instructing Officer Steinert, the supervisor asked if

Officer Steinert disclosed any of the confidential information to the victim. Officer Steinert replied no.

A supervisor with the Covina Police Department is required to perform audits of two crime reports per week. This audit involves contacting the person whom reported the crime to inquire whether the department and officer responded courteously and appropriately. Because Officer Steinert's supervisor had already reviewed the vandalism report, he decided to use that report as one of the two audited reports for the week. When the supervisor contacted the victim, she reported that Officer Steinert had disclosed confidential information about the possible suspect when she made her crime report. With this information, the supervisor launched an internal affairs investigation of Officer Steinert that ultimately led to dismissal from the department.

Officer Steinert challenged the dismissal by asking the court to suppress statements to the supervisor on the ground that the conversation in which it was elicited was an interrogation that could and did lead to punitive action and that therefore, Officer Steinert should have been afforded the protections of POBR.

The court stated the entire case hinged on the nature of the conversation between Officer Steinert and the supervisor in which Officer Steinert lied about releasing criminal history

information to the victim:

Was it an interrogation that could lead to punitive action-in which case Officer Steinert should have been afforded the POBR procedural protections- or was it a routine interrogation in the normal course of duty, counseling, or informal verbal admonishment, such that no violation of Officer Steinert's rights occurred?

At the time Officer Steinert was questioned, the supervisor knew of no facts that would have caused him to believe that the search itself was improper. The supervisor stated he asked the question regarding disclosure of confidential information to the victim "In the interest of being thorough, my responsibility as a supervisor." The court went on to say:

Had the supervisor not elected to audit that report and therefore not learned that Officer Steinert had improperly disclosed confidential information, the matter would have been resolved. The supervisor's discovery that Officer Steinert had disseminated confidential information despite denying this had occurred, not the search designation issue, caused the internal affairs investigation.

The supervisor testified, “The focus of the investigation or allegation was lying to me. It had nothing to do with the conversation that we had about accessing the information. In my mind, that was a done deal. We had already dealt with that issue.”

The court ruled that applying the law to the facts as found by the trial court:

The interaction was an interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor, and that by the terms of Section 3303(i), the Act did not apply.

THE BOTTOM LINE:

When conducting an investigation of a routine event, not a complaint of misconduct, the “normal course of duty” exception to Section 3303(i) will normally apply and the officer involved is not entitled to Section 3303 protections.

SCENARIO 2:

As the on-duty Watch Commander, you receive a complaint from a citizen regarding one of your

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Mr. Mayer writes and lectures extensively, in California and nationally, on legal issues which impact on law enforcement including, but not limited to, the use of force, pursuits, discipline and due process, public records, personnel files, and the Public Safety Officers Procedural Bill of Rights Act. He presents on behalf of numerous statewide law enforcement associations and the California Commission on Peace Officers Standards and Training (POST). He has served on many POST committees as a subject matter expert and has participated in several POST Telecourses, which are used for training peace officers throughout the state. Mr. Mayer is also the 2005 recipient of the “Governor’s Lifetime Achievement Award for Excellence in Peace Officer Training.”

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Speaking Engagements

- *California Commission on Peace Officer's Standards & Training (POST) 1980-present*
 - Executive Development Program
 - Police Mid-management Course
 - County Chiefs and Sheriff's Associations Annual Training Retreats

- *California Peace Officer's Association (CPOA)* 1979-present
 - Role of the Chief of Police
 - Discipline and Due Process
 - Legal Update (2 day session)
 - American's With Disabilities Act (ADA)
- *American's for Effective Law Enforcement (AELE)* 1989-present
 - Civil Liability Issues Affecting Law Enforcement
 - Discipline and Law Enforcement
- *Labor Relations Information System (LRIS)* 1995-present
 - Labor Relations and Disciplinary Procedures
- *International Association of Chief's of Police (IACP)* 1997-present
 - Police Psychologist Committee – "Impact of Psychologists on Law Enforcement"
 - Legal Officer's Section – "Union Impact on Internal Affairs Investigations"
- *California State Sheriff's Association (CSSA)* 1990-present
 - Legal Update at Annual Conference
- *California State University at Long Beach, Department of Criminal Justice* 1992-present
 - Legal Issues Affecting Internal Affairs Investigations
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 - Legal Update Impacting Upon Background Investigations
- *League of California Cities Annual Conference* 1998-present
 - Chief of Police Department – Legal Update City Attorney Department –Civilian Review Boards

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