

106TH CONGRESS
2D SESSION

S. 2256

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.

IN THE SENATE OF THE UNITED STATES

MARCH 21, 2000

Mr. BIDEN (for himself and Mr. McCONNELL) 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 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 *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 “State and Local Law
5 Enforcement Discipline, Accountability, and Due Process
6 Act of 2000”.

7 **SEC. 2. FINDINGS AND DECLARATION OF PURPOSE AND**
8 **POLICY.**

9 (a) FINDINGS.—Congress finds the following:

10 (1) The rights of law enforcement officers to
11 engage in political activity or to refrain from engag-
12 ing in such activity, except when on duty, or to run
13 as candidates for public office, unless such service is
14 found to be in conflict with their service as officers,
15 are activities protected by the first amendment, as
16 applied to the States through the 14th amendment.
17 Unfortunately, these rights are often violated by the
18 management of State and local law enforcement
19 agencies.

20 (2) A significant lack of due process rights of
21 law enforcement officers during internal investiga-
22 tions and disciplinary proceedings has resulted in a
23 loss of confidence in these processes by many law
24 enforcement officers, including those unfairly tar-
25 geted for their labor organization activities or for

1 their aggressive enforcement of the laws, demor-
2 alizing many rank and file officers in communities
3 and States. In addition, unfair treatment of officers
4 has potentially serious long-term consequences for
5 law enforcement by potentially deterring or other-
6 wise preventing officers from carrying out their du-
7 ties and responsibilities effectively and fairly. Also,
8 the lack of labor-management cooperation in discipli-
9 nary matters and either the perception or the actu-
10 ality (or both) that officers are not treated fairly
11 detrimentally impacts the recruitment of and reten-
12 tion of effective officers, as potential officers and ex-
13 perienced officers seek other careers. This has seri-
14 ous implications and repercussions for officer mo-
15 rale, public safety, and labor-management relations
16 and strife and can therefore affect interstate and
17 intrastate commerce, interfering with the normal
18 flow of commerce.

19 (3)(A) A lack of statutory protections to
20 ensure—

21 (i) the due process and political rights of
22 law enforcement officers;

23 (ii) fair and thorough internal investiga-
24 tions and interrogations of and disciplinary pro-
25 ceedings against law enforcement officers; and

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

15 (1) to protect the due process and political
16 rights of State and local law enforcement officers
17 and to ensure equality and fairness of treatment
18 among such officers;

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

1 under the Constitution and Congress' authority
2 thereunder.

3 **SEC. 3. DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS**

4 **OF OFFICERS.**

5 Part H of title I of the Omnibus Crime Control and
6 Safe Streets Act of 1968 (42 U.S.C. 3781 et seq.) is
7 amended by adding at the end the following:

8 **“SEC. 820. DISCIPLINE, ACCOUNTABILITY, AND DUE PROC-**

9 **ESS OF STATE AND LOCAL LAW ENFORCE-**

10 **MENT OFFICERS.**

11 “(a) DEFINITIONS.—In this section:

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

19 “(2) DISCIPLINARY HEARING.—The term ‘dis-
20 ciplinary hearing’ means an administrative hearing
21 initiated by a law enforcement agency against a law
22 enforcement officer, based on an alleged violation of
23 law, that, if proven, would subject the law enforce-
24 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 reduction in pay or bene-
6 fits when the law enforcement agency, or an official
7 within that agency, determines that there is probable
8 cause, based upon the conduct of the law enforce-
9 ment officer, to believe that the law enforcement of-
10 ficer poses an immediate threat to the safety of the
11 officer or others or the property of others.

12 “(4) INVESTIGATION.—The term
13 ‘investigation’—

14 “(A) means an action taken to determine
15 whether a law enforcement officer has engaged
16 in, is engaging in, or will engage in, a violation
17 of law—

18 “(i) by a public agency or a person
19 employed by a public agency, acting alone
20 or in cooperation with or at the direction
21 of another agency, or a division or unit
22 within another agency, irrespective of a de-
23 nial by such an agency that any such ac-
24 tion is not an investigation; and

25 “(B) includes—

1 “(i) asking questions of any other law
2 enforcement officer or non-law enforcement
3 officer;

4 “(ii) conducting observations by what-
5 ever means;

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

8 “(iv) examining physical evidence.

9 “(5) LAW.—The term ‘law’ means any statute,
10 ordinance, rule, regulation, procedure, policy, court
11 order, or written order.

12 “(6) LAW ENFORCEMENT OFFICER.—The term
13 ‘law enforcement officer’ has the same meaning
14 given that term in section 1204, except the term
15 does not include a law enforcement officer employed
16 by the United States, or any department, agency, or
17 instrumentality thereof.

18 “(7) PERSONNEL RECORDS.—The term ‘per-
19 sonnel records’ means any document, whether in
20 written or electronic form and irrespective of loca-
21 tion, that has been or may be used in determining
22 a law enforcement officer’s qualifications for employ-
23 ment, promotion, transfer, additional compensation,
24 termination or other any disciplinary action.

1 “(8) PUBLIC AGENCY AND LAW ENFORCEMENT
2 AGENCY.—The terms ‘public agency’ and ‘law en-
3 forcement agency’ each have the same meaning
4 given the term ‘public agency’ in section 1204, ex-
5 cept the terms do not include the United States, or
6 any department, agency, or instrumentality thereof.

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

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

11 “(B) for a violation of law that has been
12 negotiated and agreed upon by the law enforce-
13 ment agency and the law enforcement officer,
14 based upon a written waiver by the officer of
15 the officer’s rights under subsection (i) and any
16 other applicable law or constitutional provision,
17 after consultation with the officer’s counsel or
18 representative.

19 “(10) VIOLATION OF LAW.—The term ‘violation
20 of law’ means a violation of a law.

21 “(b) APPLICABILITY.—

22 “(1) IN GENERAL.—This section sets forth the
23 due process rights, including procedures, that shall
24 be afforded a law enforcement officer who is the
25 subject of an investigation or disciplinary hearing.

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

3 “(A) an investigation of specifically alleged
4 conduct by a law enforcement officer that, if
5 proven, would constitute a definite violation of
6 a statute providing for criminal penalties; or

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

10 “(c) POLITICAL ACTIVITY.—

11 “(1) RIGHT TO ENGAGE OR NOT TO ENGAGE IN
12 POLITICAL ACTIVITY.—Except when on duty or act-
13 ing in an official capacity, a law enforcement officer
14 shall not be prohibited from engaging in political ac-
15 tivity or be denied the right to refrain from engaging
16 in such activity.

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

18 A law enforcement officer shall not be—

19 “(A) prohibited from being a candidate for
20 an elective office or from serving in such an
21 elective office, solely because of the law enforce-
22 ment officer’s status as a law enforcement offi-
23 cer; or

24 “(B) required to resign or take an unpaid
25 leave from employment with a law enforcement

1 agency to be a candidate for an elective office
2 or to serve in an elective office, unless such
3 service is determined to be conflict with or in-
4 compatible with service as a law enforcement
5 officer.

6 “(3) ADVERSE PERSONNEL ACTION.—An action
7 by a public agency against a law enforcement officer,
8 including requiring the officer to take unpaid leave
9 from employment, in violation of this subsection
10 shall be considered an adverse personnel action with-
11 in the meaning of subsection (a)(1).

12 “(d) EFFECTIVE PROCEDURES FOR RECEIPT, RE-
13 VIEW, AND INVESTIGATION OF COMPLAINTS AGAINST
14 LAW ENFORCEMENT OFFICERS.—

15 “(1) COMPLAINT PROCESS.—Not later than 1
16 year after the effective date of this section, each law
17 enforcement agency shall adopt and thereafter com-
18 ply with a written complaint procedure that—

19 “(A) authorizes persons from outside the
20 law enforcement agency to submit written com-
21 plaints about a law enforcement officer to the
22 law enforcement agency employing the law en-
23 forcement officer, or to any other law enforce-
24 ment agency charged with investigating such
25 complaints;

1 “(B) sets forth the procedures for the in-
2 vestigation and disposition of such complaints;

3 “(C) provides for public access to required
4 forms and other information concerning the
5 submission and disposition of written com-
6 plaints; and

7 “(D) requires notification to the complain-
8 ant in writing of the final disposition of the
9 complaint and the reasons for such disposition.

10 “(2) INITIATION OF AN INVESTIGATION.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), an investigation based on a
13 complaint from outside the law enforcement
14 agency shall commence not later than 15 days
15 after the receipt of the complaint by—

16 “(i) the law enforcement agency em-
17 ploying the law enforcement officer against
18 whom the complaint has been made; or

19 “(ii) any other law enforcement agen-
20 cy charged with investigating such a com-
21 plaint.

22 “(B) EXCEPTION.—Subparagraph (A)
23 does not apply if—

24 “(i) the law enforcement agency at
25 issue determines from the face of the com-

8 “(3) COMPLAINANT OR VICTIM CONFLICT OF
9 INTEREST.—The complainant or victim of the al-
10 leged violation of law giving rise to an investigation
11 under this subsection may not conduct or supervise
12 the investigation or serve as an investigator.

13 "(e) NOTICE OF INVESTIGATION.—Any law enforce-
14 ment officer who is the subject of an investigation shall
15 be notified of the investigation 24 hours prior to the com-
16 mencement of questioning or to otherwise being required
17 to provide information to an investigating agency. Such
18 notice shall include—

19 “(1) the nature and scope of the investigation;
20 “(2) a description of any allegation contained in
21 a written complaint;

22 “(3) a description of each violation of law al-
23 leged in the complaint for which suspicion exists
24 that the officer may have engaged in conduct that
25 may subject the officer to disciplinary action; and

1 “(4) the name, rank, and command of the offi-
2 cer or any other individual who will be conducting
3 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 of the officer’s choice,
15 such as an employee representative, or both,
16 immediately prior to and during the entire pe-
17 riod of any questioning session, unless the offi-
18 cer consents in writing to being questioned out-
19 side 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 representative, if such
24 consultation does not repeatedly and unneces-
25 sarily disrupt the questioning period.

1 “(C) UNAVAILABILITY OF COUNSEL.—If
2 the law enforcement officer’s counsel or rep-
3 resentative is not available within 24 hours of
4 the time set for the commencement of any ques-
5 tioning of the 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 or indi-
22 viduals conducting the investigation on behalf
23 of the law enforcement agency employing the
24 officer under investigation; or

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

3 “(4) IDENTIFICATION OF QUESTIONER.—Prior
4 to 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 officer’s coun-
23 sel or representative, if such person is present.

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

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

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

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

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

22 “(8) RECORDING.—All questioning of a law en-
23 forcement officer under an investigation shall be re-
24 corded in full, in writing or by electronic device, and
25 a copy of a transcript thereof shall be provided to

1 the officer under investigation prior to any subse-
2 quent period of questioning or the filing of any
3 charge against the officer who is the subject of the
4 investigation. To ensure the accuracy of the record-
5 ing, an officer may utilize a separate electronic re-
6 cording device, and a copy of any such recording (or
7 a transcript thereof) shall be provided to the public
8 agency conducting the questioning, if it so requests.

9 “(9) USE OF HONESTY TESTING DEVICES PRO-
10 HIBITED.—No law enforcement officer under inves-
11 tigation may be compelled to submit to the use of
12 a lie detector, as defined in section 2 of the Em-
13 ployee Polygraph Protection Act of 1988 (29 U.S.C.
14 2001).

15 “(g) NOTICE OF INVESTIGATIVE FINDINGS AND DIS-
16 CIPLINARY RECOMMENDATION AND OPPORTUNITY TO
17 SUBMIT A WRITTEN RESPONSE.—

18 “(1) NOTICE.—Not later than 30 days after the
19 conclusion of an investigation under this section, the
20 person in charge of the investigation or that person’s
21 designee shall notify the law enforcement officer who
22 was the subject of the investigation in writing of the
23 investigative findings and any recommendations for
24 disciplinary action.

1 “(2) OPPORTUNITY TO SUBMIT WRITTEN RE-
2 SPONSE.—Not later than 30 days after receipt of a
3 notification under paragraph (1) and prior to the fil-
4 ing of any charge seeking the discipline of such offi-
5 cer or the commencement of any disciplinary pro-
6 ceeding under subsection (h), the law enforcement
7 officer who was the subject of the investigation may
8 submit a written response to the findings and rec-
9 ommendations included the notification. Such re-
10 sponse may also include references to additional doc-
11 uments, physical objects, witnesses, or any other in-
12 formation that the law enforcement officer believes
13 may provide exculpatory evidence.

14 “(h) DISCIPLINARY HEARING.—

15 “(1) NOTICE OF OPPORTUNITY FOR HEAR-
16 ING.—Except in a case of summary punishment or
17 emergency suspension (subject to subsection (k)),
18 prior to the imposition of any disciplinary action the
19 law enforcement agency shall notify the officer that
20 the officer is entitled to a due process hearing by an
21 independent and impartial hearing officer or board.

22 “(2) REQUIREMENT OF DETERMINATION OF
23 VIOLATION.—No disciplinary action may be taken
24 against a law enforcement officer unless an inde-
25 pendent and impartial hearing officer or board de-

1 termines, after a hearing and in accordance with the
2 requirements set forth in this subsection, that the
3 enforcement officer committed a violation of law.

4 “(3) TIME LIMIT.—No disciplinary charge may
5 be brought against a law enforcement officer,
6 unless—

7 “(A) the charge is filed not later than the
8 earlier of—

9 “(i) 1 year after the date on which the
10 law enforcement agency filing the charge
11 has knowledge or reasonably should have
12 had knowledge of an alleged violation of
13 law; or

14 “(ii) 90 days after the commencement
15 of an investigation; or

16 “(B) the requirements of this paragraph
17 are waived in writing by the officer or the offi-
18 cer’s counsel or representative.

19 “(4) NOTICE OF HEARING.—Unless waived in
20 writing by the officer or the officer’s counsel or rep-
21 resentative, not later than 30 days after the filing of
22 a disciplinary charge against a law enforcement offi-
23 cer, the law enforcement agency filing the charge
24 shall provide written notification to the law enforce-
25 ment officer who is the subject of the charge, of—

1 “(A) the date, time, and location of any
2 disciplinary hearing, which shall be scheduled in
3 cooperation with the law enforcement officer, or
4 the law enforcement officer’s counsel or rep-
5 resentative, and which shall take place not ear-
6 lier than 30 days and not later than 60 days
7 after notification of hearing to the law enforce-
8 ment officer under investigation;

9 “(B) the name and mailing address of the
10 independent and impartial hearing officer or the
11 names and mailing addresses of the inde-
12 pendent and impartial hearing board members;
13 and

14 “(C) the name, rank, command, and ad-
15 dress of the law enforcement officer prosecuting
16 the matter for the law enforcement agency, or
17 the name, position, and mailing address of the
18 person prosecuting the matter for a public
19 agency, if not a law enforcement officer.

20 “(5) ACCESS TO DOCUMENTARY EVIDENCE AND
21 INVESTIGATIVE FILE.—Unless waived in writing by
22 the law enforcement officer or the officer’s counsel
23 or representative, not later than 15 days prior to a
24 disciplinary hearing described in paragraph (4)(A),
25 the law enforcement officer shall be provided with—

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

3 “(B) access to and, if so requested, copies
4 of all documents, including transcripts, records,
5 written statements, written reports, analyses,
6 and electronically recorded information that—

7 “(i) contain exculpatory information;

8 “(ii) are intended to support any dis-
9 ciplinary action; or

10 “(iii) are to be introduced in the dis-
11 ciplinary hearing.

12 “(6) EXAMINATION OF PHYSICAL EVIDENCE.—

13 Unless waived in writing by the law enforcement of-
14 ficer or the officer’s counsel or representative—

15 “(A) not later than 15 days prior to a dis-
16 ciplinary hearing, the prosecuting agency shall
17 notify the law enforcement officer or the offi-
18 cer’s counsel or representative of all physical,
19 non-documentary evidence; and

20 “(B) not later than 10 days prior to a dis-
21 ciplinary hearing, the prosecuting agency shall
22 provide reasonable a date, time, place, and
23 manner for the law enforcement officer or the
24 law enforcement officer’s counsel or representa-

1 tive to examine the evidence described in sub-
2 paragraph (A).

3 “(7) IDENTIFICATION OF WITNESSES.—Unless
4 waived in writing by the law enforcement officer or
5 the officer’s counsel or representative, not later than
6 15 days prior to a disciplinary hearing, the pros-
7 ecuting agency shall notify the law enforcement offi-
8 cer or the officer’s counsel or representative, of the
9 name and address of each witness for the law en-
10 forcement agency employing the law enforcement of-
11 ficer.

12 “(8) REPRESENTATION.—During a disciplinary
13 hearing, the law enforcement officer who is the sub-
14 ject of the hearing shall be entitled to due process,
15 including—

16 “(A) the right to be represented by counsel
17 or a representative,

18 “(B) the right to confront and examine all
19 witnesses against the officer; and

22 "(9) HEARING BOARD AND PROCEDURE.—

23 “(A) IN GENERAL.—A State or local gov-
24 ernment agency, other than the law enforce-

19 “(10) SUMMONSES AND SUBPOENAS.—

“(A) IN GENERAL.—The disciplinary hearing board or independent hearing officer—

1 “(I) the law enforcement agency
2 employing the officer who is the sub-
3 ject of the hearing; or

4 “(II) the law enforcement officer
5 who is the subject of the hearing; and
6 “(ii) upon written request of either
7 the agency or the officer, shall issue a
8 summons or subpoena, as appropriate, to
9 compel the appearance and testimony of a
10 witness or the production of documentary
11 evidence.

12 “(B) EFFECT OF FAILURE TO COMPLY
13 WITH SUMMONS OR SUBPOENA.—With respect
14 to any failure to comply with a summons or a
15 subpoena issued under subparagraph (A)—

16 “(i) the disciplinary hearing officer or
17 board shall petition a court of competent
18 jurisdiction to issue an order compelling
19 compliance; and

20 “(ii) subsequent failure to comply
21 with such a court order issued pursuant to
22 a petition under clause (i) shall be subject
23 to contempt of a court proceedings accord-
24 ing to the laws of the jurisdiction within
25 which the disciplinary hearing is being con-

5 “(11) CLOSED HEARING.—A disciplinary hearing
6 shall be closed to the public unless the law en-
7 forcement officer who is the subject of the hearing
8 requests, in writing, that the hearing be open to
9 specified individuals or to the general public.

10 “(12) RECORDING.—All aspects of a discipli-
11 nary hearing, including pre-hearing motions, shall be
12 recorded by audio tape, video tape, or transcription.

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

16 “(14) TESTIMONY UNDER OATH.—The hearing
17 officer or board shall administer an oath or affirma-
18 tion to each witness, who shall testify subject to the
19 laws of perjury of the State in which the disciplinary
20 hearing is being conducted.

21 “(15) VERDICT ON EACH CHARGE.—

22 “(A) IN GENERAL.—At the conclusion of
23 the presentation of all the evidence and after
24 oral or written argument, the hearing officer or

1 board shall deliberate and render a written ver-
2 dict on each charge.

3 “(B) VERDICT ISOLATED TO CHARGE
4 BROUGHT.—The hearing officer or board may
5 not find that the law enforcement officer who is
6 the subject of the hearing is liable for discipli-
7 nary action for any violation of law, as to which
8 the officer was not charged.

“(16) BURDEN OF PERSUASION AND STANDARD OF PROOF.—The prosecuting agency’s burden of persuasion or standard of proof shall be by clear and convincing evidence as to each charge alleging false statement or representation, fraud, dishonesty, deceit, moral turpitude, or criminal behavior on the part of the law enforcement officer who is the subject of the charge and by a preponderance of the evidence as to all other charge.

18 “(17) FACTORS OF ‘JUST CAUSE’ TO BE CON-
19 SIDERED BY THE HEARING OFFICER OR BOARD.—
20 No law enforcement officer who is the subject of a
21 disciplinary hearing shall be found guilty of any
22 charge or subjected to any disciplinary action unless
23 the disciplinary hearing board or independent hear-
24 ing officer finds that—

1 “(A) the officer who is the subject of the
2 charge could reasonably be expected to have
3 had knowledge of the probable consequences of
4 the alleged conduct set forth in the charge
5 against the officer;

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

9 “(C) the charging party, before filing the
10 charge, made a reasonable, fair, and objective
11 effort to discover whether the officer did in fact
12 violate the rule, regulation, order, or procedure
13 as charged;

14 “(D) the charging party did not conduct
15 the investigation arbitrarily or unfairly, or in a
16 discriminatory manner, against the officer who
17 is the subject of the charge, and the charge was
18 brought in good faith; and

19 “(E) the proposed disciplinary action rea-
20 sonably relates to the seriousness of the alleged
21 violation and to the record of service of the offi-
22 cer who is the subject of the charge.

23 “(18) FINDING OF NOT GUILTY.—If the officer
24 who is the subject of the disciplinary hearing is
25 found not guilty of the alleged violation—

1 “(A) the matter is concluded;

2 “(B) no disciplinary action may be taken

3 against the officer;

4 “(C) the officer’s personnel file shall not

5 contain any reference to the charge for which

6 the officer was found not guilty; and

7 “(D) any pay and benefits lost or deferred

8 during the pendency of the disposition of the

9 charge shall be restored to the officer as though

10 no charge had ever been filed against the offi-

11 cer, including salary or regular pay, vacation,

12 holidays, longevity pay, education incentive pay,

13 shift differential, uniform allowance, lost over-

14 time, or other premium pay opportunities, and

15 lost promotional opportunities.

16 “(19) FINDING OF GUILTY.—If the officer who

17 is the subject of the charge is found guilty, the hear-

18 ing officer or board shall make a written rec-

19 ommendation of a penalty to the law enforcement

20 agency employing the officer or any other govern-

21 mental entity that has final disciplinary authority, as

22 provided by applicable State or local law. The em-

23 ploying agency or other governmental entity may not

24 impose a penalty greater than the penalty rec-

25 ommended by the hearing officer or board.

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

8 “(i) WAIVER OF RIGHTS.—An officer who is notified
9 that he or she is under investigation or is the subject of
10 a charge may, after such notification, waive any right or
11 procedure guaranteed by this section, which waiver shall
12 be—

13 “(1) in writing; and

14 “(2) signed by—

15 “(A) the officer, who shall have consulted
16 with counsel or a representative prior to signing
17 any such waiver; or

18 “(B) the officer’s counsel or representative,
19 if expressly authorized by subsection (h).

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

23 “(k) EMERGENCY SUSPENSION.—Nothing in this
24 section may be construed to preclude a law enforcement
25 agency from imposing an emergency suspension on a law

1 enforcement officer, except that any such suspension
2 shall—

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

5 “(2) not deprive the affected officer of any pay
6 or benefit.

7 “(l) RETALIATION FOR EXERCISING RIGHTS.—There
8 shall be no imposition of or threat of disciplinary action
9 or other penalty against a law enforcement officer for the
10 exercise of any right provided to the officer under this sec-
11 tion.

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

18 “(n) DECLARATORY OR INJUNCTIVE RELIEF.—A law
19 enforcement officer who is aggrieved by a violation of or
20 is otherwise denied any right afforded by the Constitution
21 of the United States, a State constitution, this section,
22 or by any administrative rule or regulation promulgated
23 pursuant thereto, may file suit in any Federal or State
24 court of competent jurisdiction for declaratory or injunc-
25 tive relief to prohibit the law enforcement agency from vio-

1 lating or otherwise denying such right, and such court
2 shall have jurisdiction, for cause shown, to restrain such
3 a violation or denial.

4 “(o) PROTECTION OF LAW ENFORCEMENT OFFICER
5 PERSONNEL FILES.—

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

8 “(A) IN GENERAL.—Unless the officer has
9 had an opportunity to review and comment in
10 writing on any adverse material included in a
11 personnel record pertaining to the officer, no
12 law enforcement agency or other governmental
13 entity may—

14 “(i) include the adverse material in
15 that personnel record; or

16 “(ii) possess or maintain control over
17 the adverse material in any form as a per-
18 sonnel record within the law enforcement
19 agency or elsewhere in the control of the
20 employing governmental entity.

21 “(B) RESPONSIVE MATERIAL.—Any re-
22 sponsive material provided by an officer to ad-
23 verse material included in a personnel record
24 pertaining to the officer shall be—

1 “(i) attached to the adverse material;

2 and

3 “(ii) released to any person or entity
4 to whom the adverse material is released
5 pursuant to law and at the same time as
6 the adverse material is released.

7 “(2) RIGHT TO INSPECTION OF, AND RESTRI-
8 TIONS ON ACCESS TO INFORMATION IN, THE OFFI-
9 CER'S OWN PERSONNEL RECORDS.—

10 “(A) IN GENERAL.—Subject to subparagraph (B), a law enforcement officer shall have
11 the right to inspect all of the personnel records
12 of the officer not less than annually.

14 “(B) RESTRICTIONS.—A law enforcement
15 officer shall not have access to information in
16 the personnel records of the officer if the infor-
17 mation is—

18 “(i) records relating to the investiga-
19 tion of alleged conduct that, if proven,
20 would constitute or have constituted a defi-
21 nite violation of a statute providing for
22 criminal penalties, but as to which no for-
23 mal charge was brought;

24 “(ii) letters of reference for the offi-
25 cer;

1 “(iii) any portion of a test document
2 other than the results;

3 “(iv) information of a personal nature
4 about another officer if disclosure of that
5 information in non-redacted form would
6 constitute a clearly unwarranted intrusion
7 into the privacy rights of that other officer;
8 or

9 “(v) records relevant to any pending
10 claim brought by or on behalf of the officer
11 against the officer’s employing agency that
12 may be discovered in any judicial or ad-
13 ministrative proceeding between the officer
14 and the officer’s employer.

15 “(p) STATES’ RIGHTS.—

16 “(1) IN GENERAL.—Nothing in this section
17 may be construed—

18 “(A) to preempt any State or local law, or
19 any provision therein, in effect on the date of
20 enactment of the State and Local Law Enforce-
21 ment Discipline, Accountability, and Due Proc-
22 ess Act of 1999, that confers a right or a pro-
23 tection that equals or exceeds the right or pro-
24 tection afforded by this section; or

1 “(B) to prohibit the enactment of any
2 State or local law that confers a right or protec-
3 tion that equals or exceeds a right or protection
4 afforded by this section.

5 “(2) STATE OR LOCAL LAWS PREEMPTED.—A
6 State or local law, or any provision therein, that con-
7 fers fewer rights or provides less protection for law
8 enforcement officers than any provision in this sec-
9 tion shall be preempted by this section.

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

12 “(1) preempt any provision in a mutually
13 agreed-upon collective bargaining agreement, in ef-
14 fect on the date of enactment of the State and Local
15 Law Enforcement Discipline, Accountability, and
16 Due Process Act of 1999, that provides for substan-
17 tially the same or a greater right or protection af-
18 forded under this section; or

19 “(2) prohibit the negotiation of any additional
20 right or protection for officers who are subject to
21 any collective bargaining agreement.”.

22 **SEC. 4. PROHIBITION OF FEDERAL CONTROL OVER STATE
23 AND LOCAL CRIMINAL JUSTICE AGENCIES.**

24 Nothing in this Act shall be construed to authorize
25 any department, agency, officer, or employee of the United

1 States to exercise any direction, supervision, or control of
2 any police force or any criminal justice agency of any
3 State or any political subdivision thereof.

4 **SEC. 5. EFFECTIVE DATE.**

5 The amendment made by this Act shall take effect
6 with respect to each State on the earlier of—

7 (1) 2 years after the date of enactment of this
8 Act; or

9 (2) the conclusion of the second legislative ses-
10 sion of the State that begins on or after the date of
11 enactment of this Act.

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