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**Public Safety Employee Discipline and
State Bill of Rights Laws**

Part 1 (Last Month)

Introduction

**General Provisions of Bill of Rights Statutes
California Public Safety Officer Statute**

Part 2 (This Month)

California Firefighter Statute

Other States:

--Maryland

--Illinois

--Nevada

--Wisconsin

Conclusion

Resources and References

This is the second part of a two-part article. To read Part 1, click [here](#).

❖ **California Firefighter Statute**

In part 1 of this article, the California Public Safety Officers Bill of Rights and the procedural due process rights in the disciplinary process it codifies for peace officers was examined in some detail. What about its application to fire personnel? In *Gauthier v. City of Red Bluff*, #CO19291, 34 Cal.App.4th 1441, 41 Cal. Rptr.2d 35 (1995), an intermediate California appeals court held that California fire chiefs (and fire personnel in general) have no protection under Govt. Code 3301 (the Public Safety Officers Bill of Rights) because they are not “peace officers” under Penal

Code 830.37, while some employees of a fire department, such as those whose primary duties involved arson investigation may be covered by the Act. Accordingly, the plaintiff fire chief was not entitled to an administrative appeal of his termination.

The California legislature in 2007 enacted a separate statute to apply to firefighters, the [California Firefighters Procedural Bill of Rights Act](#), (“FBOR”), Gov. Code section 3250 et seq., and establishes specific requirements for administrative investigations and discipline of firefighters, including restrictions on interrogations, the right to examine and comment on personnel files, etc.

The FBOR is basically modeled on the Public Safety Officers Procedural Bill of Rights Act. Among other provisions, it establishes, with certain exceptions, a one-year period of limitations within which an employing fire department must complete its investigation of any act, omission, or other allegation of misconduct and notify the firefighter of its proposed disciplinary action.

In addition to the one-year period of limitations, the FBOR prohibits an employing fire department from requiring or requesting for purposes of job assignment or personnel action disclosure of “any item of [a firefighter’s] property, income, assets, source of income, debts, or personal or domestic expenditures, including those of any member of his or her family or household, unless that information is otherwise required to be furnished under state law or obtained pursuant to court order.”

Additionally, the FBOR requires that an employing fire department’s administrative appeals procedure for its firefighters conform to portions of the state Administrative Procedure Act (APA) . The rights and protections of the FBOR apply to a firefighter during events and circumstances involving the performance of his or her official duties.

The FBOR makes unlawful the denial or refusal to any firefighter the rights and protections guaranteed by the FBOR providing that “[t]he superior court shall have initial jurisdiction over any proceeding brought by any firefighter against any employing department or licensing or certifying agency for alleged violations of [the FBOR].” Upon a finding by the court that a fire department, its employees, agents, or assigns, maliciously violated the FBOR with the intent to injure, the statute authorizes imposition of a \$25,000 civil penalty for each and every violation and for reasonable attorney’s fees.

The statute gives a firefighter the right to review and respond to any negative comment entered in their personnel file “or any other file used for any personnel purposes by the employer.”

The California Supreme Court ruled in [*Poole v. Orange County Fire Authority*](#), #S215300, 61 Cal. 4th 1378, 354 P.3d 346, 191 Cal. Rptr. 3d 551 (2015), however, that this right did not apply to negative comments written in a supervisor’s daily log, which amounted to notes on the supervisor’s thoughts and observations concerning the employee which the supervisor could use as a memory aid while preparing performance plans and review. This was because the log was not shared with or available to anyone else other than the supervisor who wrote it. These comments would only adversely affect the plaintiff employee if and when they were placed in a personnel file, at which time there would be a right to respond to them.

The FBOR defines covered “firefighters” as including any firefighter employed by a public agency, including, but not limited to, any firefighter who is a paramedic or emergency medical technician, irrespective of rank, but does not include probationary employees or inmates performing firefighting duties.

Because it is a newer statute, there is much less case law interpreting it than exists for the Public Safety Officers Bill of Rights. Given the overall similarity in language and the rights spelled out, however, one can certainly look to how the courts have interpreted the earlier statute for guidance as to the most likely interpretation of the newer statute, without ignoring the possibility that there may be some differences in interpretation and application based on the differences in job duties.

❖ **Other States:**

While this brief article cannot examine any of the many other similar state statutes in any detail, here are just a few examples of them.

--Maryland

Maryland is among the other states that have adopted a [Law Enforcement Officers’ Bill of Rights](#), Md. Code Public Safety §3-101-3-113, which provides a variety of procedural safeguards in the disciplinary process.

In [*Robinson v. Baltimore Police Dept.*](#), #2011-17, 424 Md. 41, 23 A.3d 972, 2011 Md. Lexis775, the highest court in the state ruled that administrative charges against a police officer for making false statements about past misconduct in the course of an internal investigations were not barred by a one year limitations period provided in the Maryland Law Enforcement Officers' Bill of Rights. The limitations period starts to run from the day the officer's false statement came to their attention rather than from the date the underlying incident came to departmental attention.

The case involved a police officer who made false statements to the police department's internal investigation division regarding a sexual encounter with a prostitute. The issues on appeal was whether, under the LEOBR, the one-year statute of limitations which began when the initial incident came to the agency attention also applied to allegations of a false statement made during the subsequent interview. The court of appeals held that when a law enforcement officer knowingly makes a false statement, material to and during the investigation of prior misconduct, the officer commits an "act" that gives rise to a charge within the meaning of Md. Code Ann., Pub. Safety § 3-106(a); so the appropriate law enforcement agency has one year from the day the false statement comes to its attention to bring a charge against the officer for making that false statement. As applied to the officer's case, the false statement charge against the officer came within the one-year limitations period, as the charges were filed less than one year after the statements were made.

In an early case interpreting the statute, [*DiGrazia v. Co. Exec. for Montgomery Co.*](#), 288 Md. 437, 418 A.2d 1191, 1980 Md. Lexis 213; 115 LRRM (BNA) 4409, the state high court ruled that the Bill of Rights law covers investigations, not summary dismissals of untenured employees.

--Illinois

Illinois adopted a "bill of rights" law entitled the Illinois Peace Officers' Rights Law in 1984, which was subsequently renamed the [Uniform Peace Officers' Disciplinary Act](#), 50 ILCS 725/1 et seq. It requires superiors to inform an officer under investigation, in writing, of the identity of interrogators and others who are present; it also requires officers to identify the persons who will be representing them during any interrogation.

Since 2004, Illinois requires a complaint supported by sworn affidavit as a precedent to a formal disciplinary interview of a law enforcement officer. Illinois Uniform Peace Officers' Disciplinary Act amendment, 50 ILCS 725/3.8.

The statute has various restrictions on the ways in which officers accused of disciplinary misconduct may be interrogated. In [Krocka v. Police Bd. of Chicago](#), #1-00-2639, 327 Ill.App.3d 36, 762 N.E.2d 577, 2001 Ill. App. Lexis 933 (7th Cir., 2001), the court held that depositions and cross-examinations of a police officer who is a plaintiff in a civil action against the city, is not an "interrogation" which would trigger rights under the state's Uniform Peace Officers' Disciplinary Act.

--Nevada

The Nevada Revised Statutes at [NRS 289.010 et seq.](#) contain provisions relating to the rights of peace officers. Among other provisions, the law protects personnel files of police officers from undisclosed entries and gives an officer the right to comment on the content. As with most of the statutes, officers are given protection and recourse if they suffer retaliation for exercising their rights under the law.

--Wisconsin

Wisconsin first adopted a police bill of rights law in 1979. The current version of the [Law Enforcement Officers' Bill of Rights Law](#) appears at Chapter 164 of the Wisconsin statutes, Sec. 164.01-164.06 and is relatively limited in its provisions as compared to California and a number of other states.

❖ Conclusion

At least 17 states are known to have one form or another of a law enforcement officers' bill of rights law, with a good number of other states considering their adoption. The statutes vary in the breadth of their provisions, in which positions are covered, and in their interpretation, but overall their focus is on codifying procedural due process guarantees for officers in the disciplinary process and providing them access to their personnel files and the ability to respond to negative information placed therein. Other common provisions address restrictions on interrogations, privacy for personal information, protection against retaliation for exercise of rights provided by the statutes, and protection for off-duty political activity.

A version of a Law Enforcement Officers "Bill of Rights" has been introduced as a proposed federal law in Congress on several occasions, but has not been enacted,

although it has passed one house of Congress several times. An excellent discussion of some proposed legislation along these lines that takes into account the views and needs of management as well as rank and file officers is [Peace Officers Bill of Rights Guarantees: Responding to Union Demands with a Management Sanctioned Version](#), by Wayne W. Schmidt, Law Enforcement Executive Forum (March 2005).

❖ Resources

The following are some useful resources related to the subject of this article:

- [A guide to the FIREFIGHTERS PROCEDURAL BILL OF RIGHTS ACT](#) [Calif.], by Gary Messing and Jason Jasmine.
- [Bill of Rights Laws](#). AELE Case Summaries.
- [California Firefighters Procedural Bill of Rights Act](#)
- [California Public Safety Officers Procedural Bill of Rights Act](#).
- [Illinois Uniform Peace Officers' Disciplinary Act](#),
- [Law Enforcement Officers' Bill of Rights](#). Wikipedia article.
- [Maryland Law Enforcement Officers' Bill of Rights](#).
- [Wisconsin Law Enforcement Officers' Bill of Rights Law](#)

❖ References: *(Chronological)*

1. [An impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers' Bills of Rights](#), by Kevin M. Keenan and Samuel Walker, Vol. 14 Public Interest Law Journal 186 (2005).
2. [Peace Officers Bill of Rights Guarantees: Responding to Union Demands with a Management Sanctioned Version](#), by Wayne W. Schmidt, Law Enforcement Executive Forum (March 2005).
3. International Association of Chiefs of Police, Prepared Testimony of I.A.C.P. Vice President Darrell L. Sanders (and submitted by Roy C. Kime, IACP Legislative Counsel), before the House Subcommittee on Crime (Washington, D.C., June 18, 1996), and accompanied by An Analysis of

Proposed Law Enforcement Officers' Bill of Rights Legislation (S. 334, 104th Cong. 1st Sess.) written by Wayne W. Schmidt, vice chair of the IACP Legislative Committee (Alexandria, Virginia, 1995) viewable at <http://www.aele.org/pobor.html>.

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