

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1789

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 HOUSE OF REPRESENTATIVES

MAY 5, 2011

Mr. PAULSEN (for himself, Ms. SUTTON, Mr. LATOURETTE, and Mr. PASCARELL) introduced the following bill; which was 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 *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 2011”.

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

9 (a) FINDINGS.—Congress finds that—

10 (1) the rights of law enforcement officers to en-  
11 gage in political activity or to refrain from engaging  
12 in political 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 of  
16 the United States Constitution, as applied to the  
17 States through the 14th Amendment of the United  
18 States Constitution, but these rights are often vio-  
19 lated by the management of State and local law en-  
20 forcement agencies;

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

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

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

6 (C) 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 The Omnibus Crime Control and Safe Streets Act of  
6 1968 (42 U.S.C. 3781 et seq.) is amended—

7 (1) by redesignating part JJ, as added by sec-  
8 tion 952 of Public Law 110–315 (relating to Loan  
9 Repayment for Prosecutors and Public Defenders),  
10 as part LL, and moving such part so that such part  
11 follows part KK;

12 (2) in part LL, as so redesignated and moved  
13 by paragraph (1), by redesignating section 3001 as  
14 section 3021; and

15 (3) by adding at the end the following new part:

16 **“PART MM—DISCIPLINE, ACCOUNTABILITY, AND**  
17 **DUE PROCESS OF STATE AND LOCAL LAW**  
18 **ENFORCEMENT OFFICERS**

19 **“SEC. 3031. DISCIPLINE, ACCOUNTABILITY, AND DUE PROC-**  
20 **ESS OF STATE AND LOCAL LAW ENFORCE-**  
21 **MENT OFFICERS.**

22 “(a) DEFINITIONS.—In this section:

23 “(1) DISCIPLINARY ACTION.—The term ‘dis-  
24 ciplinary action’ means any adverse personnel action,  
25 including suspension, reduction in pay, rank, or

1 other employment benefit, dismissal, involuntary  
2 transfer, reassignment, unreasonable denial of sec-  
3 ondary employment, or similar punitive action taken  
4 against a law enforcement officer.

5 “(2) DISCIPLINARY HEARING.—The term ‘dis-  
6 ciplinary hearing’ means an administrative hearing  
7 initiated by a law enforcement agency against a law  
8 enforcement officer based on an alleged violation of  
9 law that, if proven, would subject the law enforce-  
10 ment officer to disciplinary action.

11 “(3) EMERGENCY SUSPENSION.—The term  
12 ‘emergency suspension’ means the temporary action  
13 by a law enforcement agency of relieving a law en-  
14 forcement officer from the active performance of law  
15 enforcement duties without a reduction in pay or  
16 benefits when the law enforcement agency, or an of-  
17 ficial within that agency, determines that there is  
18 probable cause, based upon the conduct of the law  
19 enforcement officer, to believe that the law enforce-  
20 ment officer poses an immediate threat to the safety  
21 of that officer, other persons, or the property of  
22 other persons.

23 “(4) INVESTIGATION.—The term ‘investiga-  
24 tion’—

1           “(A) means an action taken to determine  
2           whether a law enforcement officer violated a  
3           law by a public agency or a person employed by  
4           a public agency, acting alone or in cooperation  
5           with or at the direction of another agency, or  
6           a division or unit within another agency, re-  
7           gardless of a denial by such an agency that any  
8           such action is not an investigation; and

9           “(B) includes—

10           “(i) asking questions of any other law  
11           enforcement officer or non-law enforcement  
12           officer;

13           “(ii) conducting observations;

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

16           “(iv) examining physical evidence.

17           “(5) LAW ENFORCEMENT OFFICER.—The terms  
18           ‘law enforcement officer’ and ‘officer’ have the  
19           meaning given the term ‘law enforcement officer’ in  
20           section 1204, except that such terms do not include  
21           a law enforcement officer employed by the United  
22           States, or any department, agency, or instrumen-  
23           tality thereof.

24           “(6) PERSONNEL RECORD.—The term ‘per-  
25           sonnel record’ means any document, whether in writ-

1       ten or electronic form and irrespective of location,  
2       that has been or may be used in determining the  
3       qualifications of a law enforcement officer for em-  
4       ployment, promotion, transfer, additional compensa-  
5       tion, termination, or any other disciplinary action.

6               “(7) PUBLIC AGENCY AND LAW ENFORCEMENT  
7       AGENCY.—The terms ‘public agency’ and ‘law en-  
8       forcement agency’ have the meaning given the term  
9       ‘public agency’ in section 1204, except that such  
10       terms do not include the United States, or any de-  
11       partment, agency, or instrumentality thereof.

12               “(8) SUMMARY PUNISHMENT.—The term ‘sum-  
13       mary punishment’ means punishment imposed for a  
14       violation of law—

15                       “(A) that does not result in any discipli-  
16                       nary action; or

17                       “(B) that has been negotiated and agreed  
18                       upon by the law enforcement agency and the  
19                       law enforcement officer, based upon a written  
20                       waiver by the officer of the rights of that officer  
21                       under subsection (i) and any other applicable  
22                       law or constitutional provision, after consulta-  
23                       tion with the counsel or representative of that  
24                       officer.

25               “(b) APPLICABILITY.—



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

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

7           “(A) an investigation of specifically alleged  
8 conduct by a law enforcement officer that, if  
9 proven, would constitute a violation of a statute  
10 providing for criminal penalties; or

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

14           “(c) POLITICAL ACTIVITY.—

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

21           “(2) RIGHT TO RUN FOR ELECTIVE OFFICE.—  
22 A law enforcement officer shall not be—

23           “(A) prohibited from being a candidate for  
24 an elective office or from serving in such an

1 elective office, solely because of the status of  
2 the officer as a law enforcement officer; or

3 “(B) required to resign or take an unpaid  
4 leave from employment with a law enforcement  
5 agency to be a candidate for an elective office  
6 or to serve in an elective office, unless such  
7 service is determined to be in conflict with or  
8 incompatible with service as a law enforcement  
9 officer.

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

16 “(d) EFFECTIVE PROCEDURES FOR RECEIPT, RE-  
17 VIEW, AND INVESTIGATION OF COMPLAINTS AGAINST  
18 LAW ENFORCEMENT OFFICERS.—

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

23 “(A) authorizes persons from outside the  
24 law enforcement agency to submit written com-  
25 plaints about a law enforcement officer to—

1           “(i) the law enforcement agency em-  
2           ploying the law enforcement officer; or

3           “(ii) any other law enforcement agen-  
4           cy charged with investigating such com-  
5           plaints;

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

8           “(C) provides for public access to required  
9           forms and other information concerning the  
10          submission and disposition of written com-  
11          plaints; and

12          “(D) requires notification to the complain-  
13          ant in writing of the final disposition of the  
14          complaint and the reasons for such disposition.

15          “(2) INITIATION OF AN INVESTIGATION.—

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

21                 “(i) the law enforcement agency em-  
22                 ploying the law enforcement officer against  
23                 whom the complaint has been made; or

1                   “(ii) any other law enforcement agen-  
2                   cy charged with investigating such a com-  
3                   plaint.

4                   “(B) EXCEPTION.—Subparagraph (A)  
5                   does not apply if—

6                   “(i) the law enforcement agency deter-  
7                   mines from the face of the complaint that  
8                   each allegation does not constitute a viola-  
9                   tion of law; or

10                   “(ii) the complainant fails to comply  
11                   substantially with the complaint procedure  
12                   of the law enforcement agency established  
13                   under this section.

14                   “(3) COMPLAINANT OR VICTIM CONFLICT OF  
15                   INTEREST.—The complainant or victim of the al-  
16                   leged violation of law giving rise to an investigation  
17                   under this subsection may not conduct or supervise  
18                   the investigation or serve as an investigator.

19                   “(e) NOTICE OF INVESTIGATION.—

20                   “(1) IN GENERAL.—Any law enforcement offi-  
21                   cer who is the subject of an investigation shall be  
22                   notified of the investigation 24 hours before the  
23                   commencement of questioning or to otherwise being  
24                   required to provide information to an investigating  
25                   agency.

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

3           “(A) the nature and scope of the investiga-  
4 tion;

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

7           “(C) a description of each violation of law  
8 alleged in the complaint for which suspicion ex-  
9 ists that the officer may have engaged in con-  
10 duct that may subject the officer to disciplinary  
11 action; and

12           “(D) the name, rank, and command of the  
13 officer or any other individual who will be con-  
14 ducting the investigation.

15           “(f) RIGHTS OF LAW ENFORCEMENT OFFICERS  
16 PRIOR TO AND DURING QUESTIONING INCIDENTAL TO AN  
17 INVESTIGATION.—If a law enforcement officer is subjected  
18 to questioning incidental to an investigation that may re-  
19 sult in disciplinary action against the officer, the following  
20 minimum safeguards shall apply:

21           “(1) COUNSEL AND REPRESENTATION.—

22           “(A) IN GENERAL.—Any law enforcement  
23 officer under investigation shall be entitled to  
24 effective counsel by an attorney or representa-  
25 tion by any other person who the officer choos-

1 es, such as an employee representative, or both,  
2 immediately before and during the entire period  
3 of any questioning session, unless the officer  
4 consents in writing to being questioned outside  
5 the presence of counsel or representative.

6 “(B) PRIVATE CONSULTATION.—During  
7 the course of any questioning session, the offi-  
8 cer shall be afforded the opportunity to consult  
9 privately with counsel or a representative, if  
10 such consultation does not repeatedly and un-  
11 necessarily disrupt the questioning period.

12 “(C) UNAVAILABILITY OF COUNSEL.—If  
13 the counsel or representative of the law enforce-  
14 ment officer is not available within 24 hours of  
15 the time set for the commencement of any ques-  
16 tioning of that officer, the investigating law en-  
17 forcement agency shall grant a reasonable ex-  
18 tension of time for the law enforcement officer  
19 to obtain counsel or representation.

20 “(2) REASONABLE HOURS AND TIME.—Any  
21 questioning of a law enforcement officer under inves-  
22 tigation shall be conducted at a reasonable time  
23 when the officer is on duty, unless exigent cir-  
24 cumstances compel more immediate questioning, or  
25 the officer agrees in writing to being questioned at

1 a different time, subject to the requirements of sub-  
2 sections (e) and (f)(1).

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

7 “(A) at the office of the individual con-  
8 ducting the investigation on behalf of the law  
9 enforcement agency employing the officer under  
10 investigation; or

11 “(B) the place at which the officer under  
12 investigation reports for duty.

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

17 “(A) the name, rank, and command of the  
18 officer or other individual who will conduct the  
19 questioning; and

20 “(B) the relationship between the indi-  
21 vidual conducting the questioning and the law  
22 enforcement agency employing the officer under  
23 investigation.

24 “(5) SINGLE QUESTIONER.—During any single  
25 period of questioning of a law enforcement officer

1 under investigation, each question shall be asked by  
2 or through 1 individual.

3 “(6) REASONABLE TIME PERIOD.—Any ques-  
4 tioning of a law enforcement officer under investiga-  
5 tion shall be for a reasonable period of time and  
6 shall allow reasonable periods for the rest and per-  
7 sonal necessities of the officer and the counsel or  
8 representative of the officer, if such person is  
9 present.

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

12 “(A) IN GENERAL.—Except as provided in  
13 subparagraph (B), no threat against, false or  
14 misleading statement to, harassment of, or  
15 promise of reward to a law enforcement officer  
16 under investigation shall be made to induce the  
17 officer to answer any question, give any state-  
18 ment, or otherwise provide information.

19 “(B) EXCEPTION.—The law enforcement  
20 agency employing a law enforcement officer  
21 under investigation may require the officer to  
22 make a statement relating to the investigation  
23 by explicitly threatening disciplinary action, in-  
24 cluding termination, only if—



1           “(i) the officer has received a written  
2           grant of use and derivative use immunity  
3           or transactional immunity by a person au-  
4           thorized to grant such immunity; and

5           “(ii) the statement given by the law  
6           enforcement officer under such an immu-  
7           nity may not be used in any subsequent  
8           criminal proceeding against that officer.

9           “(8) RECORDING.—

10           “(A) IN GENERAL.—All questioning of a  
11           law enforcement officer under an investigation  
12           shall be recorded in full, in writing or by elec-  
13           tronic device, and a copy of the transcript shall  
14           be provided to the officer under investigation  
15           before any subsequent period of questioning or  
16           the filing of any charge against that officer.

17           “(B) SEPARATE RECORDING.—To ensure  
18           the accuracy of the recording, an officer may  
19           utilize a separate electronic recording device,  
20           and a copy of any such recording (or the tran-  
21           script) shall be provided to the public agency  
22           conducting the questioning, if that agency so  
23           requests.

24           “(9) USE OF HONESTY TESTING DEVICES PRO-  
25           HIBITED.—No law enforcement officer under inves-

1       tigation may be compelled to submit to the use of  
2       a lie detector, as defined in section 2 of the Em-  
3       ployee Polygraph Protection Act of 1988 (29 U.S.C.  
4       2001).

5       “(g) NOTICE OF INVESTIGATIVE FINDINGS AND DIS-  
6       CIPLINARY RECOMMENDATION AND OPPORTUNITY TO  
7       SUBMIT A WRITTEN RESPONSE.—

8               “(1) NOTICE.—Not later than 30 days after the  
9       conclusion of an investigation under this section, the  
10      person in charge of the investigation or the designee  
11      of that person shall notify the law enforcement offi-  
12      cer who was the subject of the investigation, in writ-  
13      ing, of the investigative findings and any rec-  
14      ommendations for disciplinary action.

15              “(2) OPPORTUNITY TO SUBMIT WRITTEN RE-  
16      SPONSE.—

17              “(A) IN GENERAL.—Not later than 30  
18      days after receipt of a notification under para-  
19      graph (1), and before the filing of any charge  
20      seeking the discipline of such officer or the  
21      commencement of any disciplinary proceeding  
22      under subsection (h), the law enforcement offi-  
23      cer who was the subject of the investigation  
24      may submit a written response to the findings

1           and recommendations included in the notifica-  
2           tion.

3           “(B) CONTENTS OF RESPONSE.—The re-  
4           sponse submitted under subparagraph (A) may  
5           include references to additional documents,  
6           physical objects, witnesses, or any other infor-  
7           mation that the law enforcement officer believes  
8           may provide exculpatory evidence.

9           “(h) DISCIPLINARY HEARING.—

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

17           “(2) REQUIREMENT OF DETERMINATION OF  
18           VIOLATION.—No disciplinary action may be taken  
19           against a law enforcement officer unless an inde-  
20           pendent and impartial hearing officer or board de-  
21           termines, after a hearing and in accordance with the  
22           requirements of this subsection, that the law en-  
23           forcement officer committed a violation of law.

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

4           “(A) the charge is filed not later than the  
5 earlier of—

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

11           “(ii) 90 days after the commencement  
12 of an investigation; or

13           “(B) the requirements of this paragraph  
14 are waived in writing by the officer or the coun-  
15 sel or representative of the officer.

16           “(4) NOTICE OF HEARING.—Unless waived in  
17 writing by the officer or the counsel or representa-  
18 tive of the officer, not later than 30 days after the  
19 filing of a disciplinary charge against a law enforce-  
20 ment officer, the law enforcement agency filing the  
21 charge shall provide written notification to the law  
22 enforcement officer who is the subject of the charge,  
23 of—

24           “(A) the date, time, and location of any  
25 disciplinary hearing, which shall be scheduled in

1 cooperation with the law enforcement officer, or  
2 the counsel or representative of the officer, and  
3 which shall take place not earlier than 30 days  
4 and not later than 60 days after notification of  
5 the hearing is given to the law enforcement offi-  
6 cer under investigation;

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

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

19 “(5) ACCESS TO DOCUMENTARY EVIDENCE AND  
20 INVESTIGATIVE FILE.—Unless waived in writing by  
21 the law enforcement officer or the counsel or rep-  
22 resentative of that officer, not later than 15 days be-  
23 fore a disciplinary hearing described in paragraph  
24 (4)(A), the law enforcement officer shall be provided  
25 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 counsel or representative of that offi-  
15 cer—

16           “(A) not later than 15 days before a dis-  
17 ciplinary hearing, the prosecuting agency shall  
18 notify the law enforcement officer or the coun-  
19 sel or representative of that officer of all phys-  
20 ical, non-documentary evidence; and

21           “(B) not later than 10 days before a dis-  
22 ciplinary hearing, the prosecuting agency shall  
23 provide a reasonable date, time, place, and  
24 manner for the law enforcement officer or the  
25 counsel or representative of the law enforce-

1           ment officer to examine the evidence described  
2           in subparagraph (A).

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

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

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

22          “(9) HEARING BOARD AND PROCEDURE.—

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

1           ment agency employing the officer who is sub-  
2           ject of the disciplinary hearing, shall—

3                   “(i) determine the composition of an  
4                   independent and impartial disciplinary  
5                   hearing board;

6                   “(ii) appoint an independent and im-  
7                   partial hearing officer; and

8                   “(iii) establish such procedures as  
9                   may be necessary to comply with this sec-  
10                  tion.

11               “(B) PEER REPRESENTATION ON DISCIPLI-  
12               NARY HEARING BOARD.—A disciplinary hearing  
13               board that includes employees of the law en-  
14               forcement agency employing the law enforce-  
15               ment officer who is the subject of the hearing,  
16               shall include not less than 1 law enforcement  
17               officer of equal or lesser rank to the officer who  
18               is the subject of the hearing.

19               “(10) SUMMONSES AND SUBPOENAS.—

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

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



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—

23                  “(I) be subject to contempt of a  
24                  court proceedings according to the  
25                  laws of the jurisdiction within which

1 the disciplinary hearing is being con-  
2 ducted; and

3 “(II) result in the recess of the  
4 disciplinary hearing until the witness  
5 becomes available to testify and does  
6 testify or is held in contempt.

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

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

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

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

23 “(15) FINAL DECISION ON EACH CHARGE.—

24 “(A) IN GENERAL.—At the conclusion of  
25 the presentation of all the evidence and after

1 oral or written argument, the hearing officer or  
2 board shall deliberate and render a written final  
3 decision on each charge.

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

10 “(16) BURDEN OF PERSUASION AND STANDARD  
11 OF PROOF.—The burden of persuasion or standard  
12 of proof of the prosecuting agency shall be—

13 “(A) by clear and convincing evidence as to  
14 each charge alleging false statement or rep-  
15 resentation, fraud, dishonesty, deceit, moral  
16 turpitude, or criminal behavior on the part of  
17 the law enforcement officer who is the subject  
18 of the charge; and

19 “(B) by a preponderance of the evidence as  
20 to all other charges.

21 “(17) FACTORS OF JUST CAUSE TO BE CONSID-  
22 ERED BY THE HEARING OFFICER OR BOARD.—A law  
23 enforcement officer who is the subject of a discipli-  
24 nary hearing shall not be found guilty of any charge  
25 or subjected to any disciplinary action unless the

1 disciplinary hearing board or independent hearing  
2 officer finds that—

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

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

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

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

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

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

5                   “(A) the matter is concluded;

6                   “(B) no disciplinary action may be taken  
7 against the officer;

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

11                   “(D) any pay and benefits lost or deferred  
12 during the pendency of the disposition of the  
13 charge shall be restored to the officer as though  
14 no charge had ever been filed against the offi-  
15 cer, including salary or regular pay, vacation,  
16 holidays, longevity pay, education incentive pay,  
17 shift differential, uniform allowance, lost over-  
18 time, or other premium pay opportunities, and  
19 lost promotional opportunities.

20           “(19) COMMISSION OF A VIOLATION.—

21                   “(A) IN GENERAL.—If the officer who is  
22 the subject of the charge is found to have com-  
23 mitted the alleged violation, the hearing officer  
24 or board shall make a written recommendation  
25 of a penalty to the law enforcement agency em-

1            ploying the officer or any other governmental  
2            entity that has final disciplinary authority, as  
3            provided by applicable State or local law.

4            “(B) PENALTY.—The employing agency or  
5            other governmental entity may not impose a  
6            penalty greater than the penalty recommended  
7            by the hearing officer or board.

8            “(20) APPEAL.—Any officer who has been  
9            found to have committed an alleged violation may  
10           appeal from a final decision of a hearing officer or  
11           hearing board to a court of competent jurisdiction or  
12           to an independent neutral arbitrator to the extent  
13           available in any other administrative proceeding  
14           under applicable State or local law, or a collective  
15           bargaining agreement.

16           “(i) WAIVER OF RIGHTS.—

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

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

23           “(A) in writing; and

24           “(B) signed by—

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

4                   “(ii) the counsel or representative of  
5                   the officer, if expressly authorized by sub-  
6                   section (h).

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

10          “(k) EMERGENCY SUSPENSION.—Nothing in this  
11          section may be construed to preclude a law enforcement  
12          agency from imposing an emergency suspension on a law  
13          enforcement officer, except that any such suspension  
14          shall—

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

17                 “(2) not deprive the affected officer of any pay  
18                 or benefit.

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

24          “(m) OTHER REMEDIES NOT IMPAIRED.—Nothing  
25          in this section may be construed to impair any other right

1 or remedy that a law enforcement officer may have under  
2 any constitution, statute, ordinance, order, rule, regula-  
3 tion, procedure, written policy, collective bargaining agree-  
4 ment, or any other source.

5 “(n) DECLARATORY OR INJUNCTIVE RELIEF.—A law  
6 enforcement officer who is aggrieved by a violation of, or  
7 is otherwise denied any right afforded by, the Constitution  
8 of the United States, a State constitution, this section,  
9 or any administrative rule or regulation promulgated pur-  
10 suant thereto, may file suit in any Federal or State court  
11 of competent jurisdiction for declaratory or injunctive re-  
12 lief to prohibit the law enforcement agency from violating  
13 or otherwise denying such right, and such court shall have  
14 jurisdiction, for cause shown, to restrain such a violation  
15 or denial.

16 “(o) PROTECTION OF LAW ENFORCEMENT OFFICER  
17 PERSONNEL FILES.—

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

20 “(A) IN GENERAL.—Unless the officer has  
21 had an opportunity to review and comment, in  
22 writing, on any adverse material included in a  
23 personnel record relating to the officer, no law  
24 enforcement agency or other governmental enti-  
25 ty may—



1           “(i) include the adverse material in  
2           that personnel record; or

3           “(ii) possess or maintain control over  
4           the adverse material in any form as a per-  
5           sonnel record within the law enforcement  
6           agency or elsewhere in the control of the  
7           employing governmental entity.

8           “(B) RESPONSIVE MATERIAL.—Any re-  
9           sponsive material provided by an officer to ad-  
10          verse material included in a personnel record  
11          pertaining to the officer shall be—

12                 “(i) attached to the adverse material;  
13                 and

14                 “(ii) released to any person or entity  
15                 to whom the adverse material is released in  
16                 accordance with law and at the same time  
17                 as the adverse material is released.

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

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

1           “(B) RESTRICTIONS.—A law enforcement  
2 officer shall not have access to information in  
3 the personnel records of the officer if the infor-  
4 mation—

5           “(i) relates to the investigation of al-  
6 leged conduct that, if proven, would con-  
7 stitute or have constituted a definite viola-  
8 tion of a statute providing for criminal  
9 penalties, but as to which no formal charge  
10 was brought;

11           “(ii) contains letters of reference for  
12 the officer;

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

15           “(iv) is of a personal nature about an-  
16 other officer, and if disclosure of that in-  
17 formation in non-redacted form would con-  
18 stitute a clearly unwarranted intrusion into  
19 the privacy rights of that other officer; or

20           “(v) is relevant to any pending claim  
21 brought by or on behalf of the officer  
22 against the employing agency of that offi-  
23 cer that may be discovered in any judicial  
24 or administrative proceeding between the  
25 officer and the employer of that officer.

1 “(p) STATES’ RIGHTS.—

2 “(1) IN GENERAL.—Nothing in this section  
3 may be construed—

4 “(A) to preempt any State or local law, or  
5 any provision of a State or local law, in effect  
6 on the date of enactment of the State and Local  
7 Law Enforcement Discipline, Accountability,  
8 and Due Process Act of 2011, that confers a  
9 right or a protection that equals or exceeds the  
10 right or protection afforded by this section; or

11 “(B) to prohibit the enactment of any  
12 State or local law that confers a right or protec-  
13 tion that equals or exceeds a right or protection  
14 afforded by this section.

15 “(2) STATE OR LOCAL LAWS PREEMPTED.—A  
16 State or local law, or any provision of a State or  
17 local law, that confers fewer rights or provides less  
18 protection for a law enforcement officer than any  
19 provision in this section shall be preempted by this  
20 section.

21 “(q) COLLECTIVE BARGAINING AGREEMENTS.—

22 Nothing in this section may be construed to—

23 “(1) preempt any provision in a mutually  
24 agreed-upon collective bargaining agreement, in ef-  
25 fect on the date of enactment of the State and Local

1 Law Enforcement Discipline, Accountability, and  
2 Due Process Act of 2011, that provides for substan-  
3 tially the same or a greater right or protection af-  
4 farded under this section; or

5 “(2) prohibit the negotiation of any additional  
6 right or protection for an officer who is subject to  
7 any collective bargaining agreement.”.

8 **SEC. 4. PROHIBITION OF FEDERAL CONTROL OVER STATE**  
9 **AND LOCAL CRIMINAL JUSTICE AGENCIES.**

10 Nothing in this Act shall be construed to authorize  
11 any department, agency, officer, or employee of the United  
12 States to exercise any direction, supervision, or control of  
13 any police force or any criminal justice agency of any  
14 State or any political subdivision thereof.

15 **SEC. 5. EFFECTIVE DATE.**

16 The amendments made by this Act shall take effect  
17 with respect to each State on the earlier of—

18 (1) 2 years after the date of enactment of this  
19 Act; or

20 (2) the conclusion of the second legislative ses-  
21 sion of the State that begins on or after the date of  
22 enactment of this Act.

○