HOUSE DOCKET, NO. 2447 FILED ON: 1/20/2011

HOUSE . . . . . No. 3178

The Commonwealth of Massachusetts

PRESENTED BY:

John P. Fresolo

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

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

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
John P. Fresolo	*16th Worcester*
Raymond McGrath	*159 Burgin Parkway* *Quincy, MA 02169-4213*

HOUSE DOCKET, NO. 2447 FILED ON: 1/20/2011

HOUSE . . . . . No. 3178

By Mr. Fresolo of Worcester, a petition (accompanied by bill, House, No. 3178) of John P. Fresolo and Raymond McGrath for legislation to establish a law enforcement bill of rights. Public Service.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *2418* OF 2009-2010.]

The Commonwealth of Massachusetts

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

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 31B.

Section l (a). For the purposes of this chapter, "Law enforcement officer" shall be defined as a sworn member of: The Massachusetts State police, any municipal police force, the police department or force of any region or county, the Office of the Sheriff of any County, any state or county correctional facility, any special law enforcement unit pursuant to chapter 22C

Section 2. When any public safety officer is under investigation and subjected to interrogation by his commanding officer, or any other member of the employing public safety department, which could lead to punitive action, such interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action is defined as any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(b) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If such interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for such off-duty time in accordance with regular department

procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to such interrogation of the rank, name and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his express consent nor shall his home address or photograph be given to the press or news media without his express consent.

(f) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports which are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his own recording device and record any and all aspects of the interrogation.

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

(h) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters which are likely to result in punitive action against any public safety officer, that officer, at his request, shall have the right to be represented by a representative of his choice who may be present at all times during such interrogation. The representative shall not be a

53 person subject to the same investigation. The representative shall not be required to disclose, nor
54 be subject to any punitive action for refusing to disclose, any information received from the
55 officer under investigation for noncriminal matters. This section shall not apply to any
56 interrogation of a public safety officer in the normal course of duty, counseling, instruction, or
57 informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or
58 any other public safety officer, nor shall this section apply to an investigation concerned solely
59 and directly with alleged criminal activities.

60 (i) No public safety officer shall be loaned or temporarily reassigned to a location or duty
61 assignment if a sworn member of his department would not normally be sent to that location or
62 would not normally be given that duty assignment under similar circumstances.

63 (j) Upon completion of the investigation, the law enforcement officer shall be notified of
64 the name of any witness and all charges and specifications against the officer not less than 10
65 days prior to any hearing

66 (k) In addition, the law enforcement officer under investigation shall be furnished with a
67 copy of the investigatory file and any exculpatory information, but excluding:

68 1. The identity of confidential sources;

69 2. Any nonexculpatory information; and

70 3. Recommendations as to charges, disposition, or punishment.

71 (1) The law enforcement officer under investigation shall be furnished with a copy of the
72 investigatory file and the exculpatory information described under subparagraph (iii) of this
73 paragraph not less than 10 days before any hearing if the officer and the officer's representative
74 agree:

75 1. To execute a confidentiality agreement with the law enforcement agency to not
76 disclose any of the material contained in the record for any purpose other than to defend the
77 officer; and

78 2. To pay any reasonable charge for the cost of reproducing the material involved.

79 (m) The law enforcement officer under interrogation may not be threatened with transfer,
80 dismissal, or disciplinary action. (n) Unless otherwise required or conducted on a routine basis,
81 no law enforcement officer shall be required to submit to blood alcohol tests, blood, breath, or
82 urine tests for controlled substances, polygraph examinations or interrogations which specifically
83 relate to the subject of the investigation. The results of any such test are not admissible or
84 discoverable in any criminal or civil proceeding against the law enforcement officer, when said
85 officer has been ordered to submit thereto.

86 (o) If the chief is the law enforcement officer under investigation, the chief of another law
87 enforcement agency in this State shall function as the law enforcement officer of the same rank
88 on the hearing board.

89 1. If the chief of a State law enforcement agency is under investigation, the Governor
90 shall appoint the chief of another law enforcement agency as the law enforcement officer of the
91 same rank on the hearing board.

92 2. If the chief of a county or municipal law enforcement agency is under investigation,
93 the official who may appoint the chief's successor shall appoint the chief of another law
94 enforcement agency as the officer of the same rank on the hearing board.

95 3. If the chief of a State law enforcement agency or the chief of a county or municipal
96 law enforcement agency is under investigation, the official who may appoint the chief's
97 successor, or that official's designee, shall function as chief for the purposes of this subtitle.

98 Section 3. (a) No evidence may be obtained, received or admitted into evidence in any
99 proceeding of any disciplinary action which violates any of the rights established by the United
100 States Constitution or Constitution or by this chapter. The tribunal may not enter any judgment
101 or sustain any disciplinary action based on any evidence obtained in violation of the officer's
102 rights as contained in this chapter.

103 (b) Any decision, order or action taken following the hearing shall be in writing and shall
104 be accompanied by findings of fact. The findings shall consist of a concise statement upon each
105 issue in the case. A copy of the decision or order accompanying findings and conclusions along
106 with the written action and right of appeal, if any, shall be delivered or mailed promptly to the
107 law enforcement officer or to his or her attorney or representative of record.

108 Section 4. No law enforcement officer shall be compelled to work extra duty without
109 compensation as a penalty for a disciplinary infraction. No suspension for any period of time
110 provided in departmental rules and regulations shall affect the law enforcement officer's
111 eligibility for pension, hospitalization, medical and life insurance coverage or other benefits
112 specifically protected under his or her contract of employment. Suspension may affect time of
113 pension eligibility by contractual provision or other statutory provision. Nothing herein shall
114 prevent any law enforcement agency from requiring reimbursement by a suspended law
115 enforcement officer of his or her employee contribution to his or her benefits during his or her
116 time of suspension.

117 Section 5. No public safety officer shall be required or requested for purposes of job
118 assignment or other personnel action to disclose any item of his property, income, assets, source
119 of income, debts or personal or domestic expenditures (including those of any member of his
120 family or household) unless such information is obtained or required under state law or proper
121 legal procedure, tends to indicate a conflict of interest with respect to the performance of his

122 official duties, or is necessary for the employing agency to ascertain the desirability of assigning
123 the public safety officer to a specialized unit in which there is a strong possibility that bribes or
124 other improper inducements may be offered.

125 Section 6. No public safety officer shall have his locker, or other space for storage that
126 may be assigned to him searched except in his presence, or with his consent, or unless a valid
127 search warrant has been obtained or where he has been notified that a search will be conducted.
128 This section shall apply only to lockers or other space for storage that are owned or leased by the
129 employing agency.

130 Section 7. (c) Evidence which possesses probative value commonly accepted by
131 reasonable and prudent persons in the conduct of their affairs shall be admissible in evidence and
132 given probative effect. The tribunal conducting the hearing shall give effect to the rules of
133 privilege recognized by law and exclude incompetent, irrelevant, immaterial and unduly
134 repetitious evidence. All records and documents which any party desires to use shall be offered
135 and made a part of the record. Documentary evidence may be received in the form of copies of
136 excerpts or by incorporation by reference.

137 (d) Every party shall have the right of cross-examination of witnesses who testify and
138 may submit rebuttal evidence.

139 (e) The tribunal may take notice of judicially cognizable facts and in addition may take
140 notice of general, technical or scientific facts within its specialized knowledge. Parties shall be
141 notified beforehand of the materials so noticed by the trial board. No law enforcement officer
142 may be adjudged guilty of any offense unless the hearing tribunal is satisfied that guilt has been
143 established by substantial evidence.

144 Section 8. A law enforcement agency may not prohibit secondary employment but may
145 promulgate reasonable regulations as to a law enforcement officer's secondary employment.

146 Section 9. The rights established by the provisions of this chapter shall not be diminished
147 or abridged by any local ordinance or collective bargaining agreement