

AMENDED IN ASSEMBLY APRIL 29, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 545

Introduced by Assembly Member Floyd

February 18, 1999

An act to ~~amend Section 3304 of the Government Code, and to amend Section 148.6 of the Penal Code~~ *add Chapter 9.8 (commencing with Section 3320) to Division 4 of Title 1 of the Government Code*, relating to law enforcement employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 545, as amended, Floyd. Law enforcement employees.

(1) Existing law, the Public Safety Officers Procedural Bill of Rights Act, provides generally that no punitive action nor denial of promotion on grounds other than merit shall be undertaken for any act, omission, or other allegation of misconduct by a public safety officer if the investigation is not completed within one year.

This bill would apply the same prohibition with respect to the investigation of alleged misconduct by a nonsworn law enforcement employee and would thereby impose a state-mandated local program on local public safety agencies.

(2) Existing law makes it a misdemeanor for any person to file any allegation of misconduct against any peace officer knowing the allegation to be false.

This bill would also make it a misdemeanor to file any allegation of misconduct against any nonsworn employee of a law enforcement agency knowing the allegation to be false.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—Section 3304 of the Government Code is~~
2 *SECTION 1. Chapter 9.8 (commencing with Section*
3 *3320) is added to Division 4 of Title 1 of the Government*
4 *Code, to read:*

5
6 *CHAPTER 9.8. NONSWORN LAW ENFORCEMENT*
7 *EMPLOYEES*
8

9 *3320. (a) Except as provided in this subdivision and*
10 *subdivision (d), no punitive action, nor denial of*
11 *promotion on grounds other than merit, shall be*
12 *undertaken for any act, omission, or other allegation of*
13 *misconduct by a nonsworn law enforcement employee if*
14 *the investigation of the allegation is not completed within*
15 *one year of the public agency's discovery by a person*
16 *authorized to initiate an investigation of the allegation of*
17 *an act, omission, or other misconduct. This one-year*



1 limitation period shall apply only if the act, omission, or
2 other misconduct occurred on or after January 1, 1998. In
3 the event that the public agency determines that
4 discipline may be taken, it shall complete its investigation
5 and notify the employee of its proposed disciplinary
6 action within that year, except in any of the following
7 circumstances:

8 (1) If the act, omission, or other allegation of
9 misconduct is also the subject of a criminal investigation
10 or criminal prosecution, the time during which the
11 criminal investigation or criminal prosecution is pending
12 shall toll the one-year time period.

13 (2) If the employee waives the one-year time period
14 in writing, the time period shall be tolled for the period
15 of time specified in the written waiver.

16 (3) If the investigation is a multijurisdictional
17 investigation that requires a reasonable extension for
18 coordination of the involved agencies.

19 (4) If the investigation involves more than one
20 employee and requires a reasonable extension.

21 (5) If the investigation involves an employee who is
22 incapacitated or otherwise unavailable.

23 (6) If the investigation involves a matter in civil
24 litigation where the employee is named as a party
25 defendant, the one-year time period shall be tolled while
26 that civil action is pending.

27 (7) If the investigation involves a matter in criminal
28 litigation where the complainant is a criminal defendant,
29 the one-year time period shall be tolled during the period
30 of that defendant's criminal investigation and
31 prosecution.

32 (8) If the investigation involves an allegation of
33 workers' compensation fraud on the part of the
34 employee.

35 (b) Where a predisciplinary response or grievance
36 procedure is required or utilized, the time for this
37 response or procedure shall not be governed or limited by
38 this chapter.

39 (c) If, after investigation and any predisciplinary
40 response or procedure, the public agency decides to

1 impose discipline, the public agency shall notify the
2 nonsworn law enforcement employee in writing of its
3 decision to impose discipline, including the date that the
4 discipline will be imposed, within 30 days of its decision,
5 except if the employee is unavailable for discipline.

6 (d) Notwithstanding the one-year time period
7 specified in subdivision (a), an investigation may be
8 reopened against a nonsworn law enforcement employee
9 if both of the following circumstances exist:

10 (1) Significant new evidence has been discovered that
11 is likely to affect the outcome of the investigation.

12 (2) One of the following conditions exist:

13 (A) The evidence could not reasonably have been
14 discovered in the normal course of investigation without
15 resorting to extraordinary measures by the agency.

16 (B) The evidence resulted from the employee's
17 predisciplinary response or procedure.

18 3321. Every person who files any allegation of
19 misconduct against any nonsworn employee of a law
20 enforcement agency knowing the allegation to be false is
21 guilty of a misdemeanor.

22 amended to read:

23 ~~3304. (a) No public safety officer shall be subjected to~~
24 ~~punitive action, or denied promotion, or be threatened~~
25 ~~with any such treatment, because of the lawful exercise~~
26 ~~of the rights granted under this chapter, or the exercise~~
27 ~~of any rights under any existing administrative grievance~~
28 ~~procedure.~~

29 ~~Nothing in this section shall preclude a head of an~~
30 ~~agency from ordering a public safety officer to cooperate~~
31 ~~with other agencies involved in criminal investigations. If~~
32 ~~an officer fails to comply with such an order, the agency~~
33 ~~may officially charge him or her with insubordination.~~

34 ~~(b) No punitive action, nor denial of promotion on~~
35 ~~grounds other than merit, shall be undertaken by any~~
36 ~~public agency against any public safety officer who has~~
37 ~~successfully completed the probationary period that may~~
38 ~~be required by his or her employing agency without~~
39 ~~providing the public safety officer with an opportunity~~
40 ~~for administrative appeal.~~



1 ~~(e) No chief of police may be removed by a public~~
2 ~~agency, or appointing authority, without providing the~~
3 ~~chief of police with written notice and the reason or~~
4 ~~reasons therefor and an opportunity for administrative~~
5 ~~appeal.~~

6 ~~For purposes of this subdivision, the removal of a chief~~
7 ~~of police by a public agency or appointing authority, for~~
8 ~~the purpose of implementing the goals or policies, or~~
9 ~~both, of the public agency or appointing authority, for~~
10 ~~reasons including, but not limited to, incompatibility of~~
11 ~~management styles or as a result of a change in~~
12 ~~administration, shall be sufficient to constitute “reason or~~
13 ~~reasons.”~~

14 ~~Nothing in this subdivision shall be construed to create~~
15 ~~a property interest, where one does not exist by rule or~~
16 ~~law, in the job of Chief of Police.~~

17 ~~(d) Except as provided in this subdivision and~~
18 ~~subdivision (g), no punitive action, nor denial of~~
19 ~~promotion on grounds other than merit, shall be~~
20 ~~undertaken for any act, omission, or other allegation of~~
21 ~~misconduct by a public safety officer or by a nonsworn~~
22 ~~law enforcement employee if the investigation of the~~
23 ~~allegation is not completed within one year of the public~~
24 ~~agency’s discovery by a person authorized to initiate an~~
25 ~~investigation of the allegation of an act, omission, or other~~
26 ~~misconduct. This one-year limitation period shall apply~~
27 ~~only if the act, omission, or other misconduct occurred on~~
28 ~~or after January 1, 1998. In the event that the public~~
29 ~~agency determines that discipline may be taken, it shall~~
30 ~~complete its investigation and notify the public safety~~
31 ~~officer or nonsworn law enforcement employee of its~~
32 ~~proposed disciplinary action within that year, except in~~
33 ~~any of the following circumstances:~~

34 ~~(1) If the act, omission, or other allegation of~~
35 ~~misconduct is also the subject of a criminal investigation~~
36 ~~or criminal prosecution, the time during which the~~
37 ~~criminal investigation or criminal prosecution is pending~~
38 ~~shall toll the one-year time period.~~

39 ~~(2) If the public safety officer or nonsworn law~~
40 ~~enforcement employee waives the one-year time period~~



1 in writing, the time period shall be tolled for the period
2 of time specified in the written waiver.

3 (3) If the investigation is a multijurisdictional
4 investigation that requires a reasonable extension for
5 coordination of the involved agencies.

6 (4) If the investigation involves more than one
7 employee and requires a reasonable extension.

8 (5) If the investigation involves an employee who is
9 incapacitated or otherwise unavailable.

10 (6) If the investigation involves a matter in civil
11 litigation where the public safety officer or nonsworn law
12 enforcement employee is named as a party defendant,
13 the one-year time period shall be tolled while that civil
14 action is pending.

15 (7) If the investigation involves a matter in criminal
16 litigation where the complainant is a criminal defendant,
17 the one-year time period shall be tolled during the period
18 of that defendant's criminal investigation and
19 prosecution.

20 (8) If the investigation involves an allegation of
21 workers' compensation fraud on the part of the public
22 safety officer or nonsworn law enforcement employee.

23 (e) Where a predisciplinary response or grievance
24 procedure is required or utilized, the time for this
25 response or procedure shall not be governed or limited by
26 this chapter.

27 (f) If, after investigation and any predisciplinary
28 response or procedure, the public agency decides to
29 impose discipline, the public agency shall notify the
30 public safety officer or nonsworn law enforcement
31 employee in writing of its decision to impose discipline,
32 including the date that the discipline will be imposed,
33 within 30 days of its decision, except if the public safety
34 officer is unavailable for discipline.

35 (g) Notwithstanding the one-year time period
36 specified in subdivision (e), an investigation may be
37 reopened against a public safety officer or nonsworn law
38 enforcement employee if both of the following
39 circumstances exist:



1 ~~(1) Significant new evidence has been discovered that~~
2 ~~is likely to affect the outcome of the investigation.~~

3 ~~(2) One of the following conditions exist:~~

4 ~~(A) The evidence could not reasonably have been~~
5 ~~discovered in the normal course of investigation without~~
6 ~~resorting to extraordinary measures by the agency.~~

7 ~~(B) The evidence resulted from the public safety~~
8 ~~officer's or nonsworn law enforcement employee's~~
9 ~~predisciplinary response or procedure.~~

10 ~~(h) For those members listed in subdivision (a) of~~
11 ~~Section 830.2 of the Penal Code, the 30-day time period~~
12 ~~provided for in subdivision (e) shall not commence with~~
13 ~~the service of a preliminary notice of adverse action,~~
14 ~~should the public agency elect to provide the public~~
15 ~~safety officer with such a notice.~~

16 ~~SEC. 2. Section 148.6 of the Penal Code is amended to~~
17 ~~read:~~

18 ~~148.6. (a) (1) Every person who files any allegation~~
19 ~~of misconduct against any peace officer, as defined in~~
20 ~~Chapter 4.5 (commencing with Section 830) of Title 3 of~~
21 ~~Part 2, or nonsworn employee of a law enforcement~~
22 ~~agency, knowing the allegation to be false, is guilty of a~~
23 ~~misdemeanor.~~

24 ~~(2) Any law enforcement agency accepting an~~
25 ~~allegation of misconduct against a peace officer shall~~
26 ~~require the complainant to read and sign the following~~
27 ~~advisory, all in boldface type:~~

28
29 ~~YOU HAVE THE RIGHT TO MAKE A COMPLAINT~~
30 ~~AGAINST A POLICE OFFICER FOR ANY IMPROPER~~
31 ~~POLICE CONDUCT. CALIFORNIA LAW REQUIRES~~
32 ~~THIS AGENCY TO HAVE A PROCEDURE TO~~
33 ~~INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE~~
34 ~~A RIGHT TO A WRITTEN DESCRIPTION OF THIS~~
35 ~~PROCEDURE. THIS AGENCY MAY FIND AFTER~~
36 ~~INVESTIGATION THAT THERE IS NOT ENOUGH~~
37 ~~EVIDENCE TO WARRANT ACTION ON YOUR~~
38 ~~COMPLAINT; EVEN IF THAT IS THE CASE, YOU~~
39 ~~HAVE THE RIGHT TO MAKE THE COMPLAINT AND~~
40 ~~HAVE IT INVESTIGATED IF YOU BELIEVE AN~~



1 OFFICER BEHAVED IMPROPERLY. CITIZEN
2 COMPLAINTS AND ANY REPORTS OR FINDINGS
3 RELATING TO COMPLAINTS MUST BE RETAINED
4 BY THIS AGENCY FOR AT LEAST FIVE YEARS.

5
6 IT IS AGAINST THE LAW TO MAKE A COMPLAINT
7 THAT YOU KNOW TO BE FALSE. IF YOU MAKE A
8 COMPLAINT AGAINST AN OFFICER KNOWING
9 THAT IT IS FALSE, YOU CAN BE PROSECUTED ON
10 A MISDEMEANOR CHARGE.

11
12 I have read and understood the above statement.

13
14 _____
15 Complainant

16
17 (b) Every person who files a civil claim against a peace
18 officer or a lien against his or her property, knowing the
19 claim or lien to be false and with the intent to harass or
20 dissuade the officer from carrying out his or her official
21 duties, is guilty of a misdemeanor. This section applies
22 only to claims pertaining to actions that arise in the course
23 and scope of the peace officer's duties.

24 SEC. 3.—

25 SEC. 2. No reimbursement is required by this act
26 pursuant to Section 6 of Article XIII B of the California
27 Constitution for certain costs that may be incurred by a
28 local agency or school district because in that regard this
29 act creates a new crime or infraction, eliminates a crime
30 or infraction, or changes the penalty for a crime or
31 infraction, within the meaning of Section 17556 of the
32 Government Code, or changes the definition of a crime
33 within the meaning of Section 6 of Article XIII B of the
34 California Constitution.

35 However, notwithstanding Section 17610 of the
36 Government Code, if the Commission on State Mandates
37 determines that this act contains other costs mandated by
38 the state, reimbursement to local agencies and school
39 districts for those costs shall be made pursuant to Part 7
40 (commencing with Section 17500) of Division 4 of Title



1 2 of the Government Code. If the statewide cost of the
2 claim for reimbursement does not exceed one million
3 dollars (\$1,000,000), reimbursement shall be made from
4 the State Mandates Claims Fund.
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