

Rights of Peace Officers

Critical Incidents

Shootings, in custody deaths, significant uses of force, etc. should always be viewed as criminal investigations, and the involved officer should speak only with a representative from this office about the incident. However, involved officers can relate to the Department information as to the suspect description, direction of flight, direction of shots, and other information important to officer/public safety.

If a fellow officer is involved in a critical incident, you may assist him/her by lending emotional support, attending to personal needs, and calling for legal representation, but do not discuss the incident. There is no privilege that prevents the discovery of such conversations.

To Contact A Representative Call:

Rains, Lucia & Wilkinson LLP

Serving Northern California with offices in:

Pleasant Hill: 925.609.1699 (24 hrs) San Jose: 408.287.3803
Sacramento: 916.646.2860 Santa Rosa: 707.576.8954

LDF 888.556.5631 (24 hrs)

Did You Know?

Penal Code §135.5 misdemeanor to destroy, tamper with officer files, or conceal information during IA to harm officer.

Penal Code §12021(e) 10 yr. prohibition to possess firearm for misdemeanor convictions including §§240, 242, 273.5, 417 PC, etc.

18 U.S.C. 921, Federal Gun Control Act any misdemeanor conviction for domestic violence on spouse or child = lifetime prohibition to possess firearm.

Penal Code §632 you cannot secretly tape record "confidential communications," i.e., supervisor, co-workers, etc.

Penal Code §502 misdemeanor to access computers without permission. i.e. LOCAL, CLETS, DMV.

Govt. Code §3306.5 Officer has the right to review personnel & IA files on duty & demand errors be corrected or to add in writing why not.

Civil Code §56.10 Department doctor (includes psychologist) cannot release information to Department without your signed release except "fit or not fit" for duty. *Pettus v Cole* (1996).

Civil Code §56.20(b) You cannot be disciplined for failure to sign a release.

Holliday v City of Modesto (1991) Employer must bargain on

The two most significant benefits given to peace officers covered by the Bill of Rights are:

- Right to representation in any interrogation which could lead to "punitive action."
- Right to appeal "punitive action."

What is "Punitive Action?"

1. Dismissal
2. Demotion
3. Suspension
4. Transfer for purpose of punishment
5. Reduction in salary
6. Written reprimand
7. Findings which may lead to adverse employment consequences

Bill of Rights Does Not Apply to:

1. Pure criminal investigation.
2. **Unplanned** supervisor contact.
3. Where the investigation could **only** lead to counseling, instruction or informal verbal admonishment, with no notation in file.

Always ask: "Can this lead to 'punitive action'?"
If supervisor says yes, ask for a representative.

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Pre-Interview Rights

Before you are questioned for something which could lead to "punitive action," the Department must tell you:

1. That you are under investigation for possible misconduct.
City of Los Angeles v Superior Court (Labio).
2. The name of the investigator(s) [3303(b)].
3. The nature of the investigation (specific enough to help you decide whether you want representation) [3303(c)].
4. Constitutional Rights (if the matter may result in the filing of criminal charges) [3303 (g)].
5. A "Lybarger" or "Garrity" warning, that orders you to talk or face disciplinary action for refusing.

Before interrogation you have the right:

- To request the representative of your choice.
- To get/use your own tape recorder.
- To review any tapes or notes of prior interviews.

Non-Waiver Statement

If ordered to give a statement without your requested representative, demand that it be recorded and read the following:

"I have been refused the right to have a representative of my choice. I understand that I am being ordered to make a report or answer questions and if I do not comply with the order, I may be disciplined for insubordination. Therefore, I have no alternative but to abide by the order. However, by so doing, I do not waive my Constitutional rights to remain silent under the Fifth and Fourteenth Amendments to the United States Constitution, and the protections of the California Constitution, and the protections afforded me under case law. Furthermore, by submitting to this coerced interview, I am not waiving any right afforded me under the Peace Officer's Bill of Rights Act, which is found at Government Code Section 3300, et seq."

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The Department May Not:

- Interrogate off-duty without compensation.
- Use over 2 interrogators at one time.
- Conduct an unreasonably lengthy interrogation.
- Use offensive language, threats or promise rewards.
- Subject you to news media without consent.
- Give home address/phone to media without consent.
- Provide media your photo without consent.
- Refuse to allow you to attend to personal physical necessities.
- Compel you to take a lie detector test
(**never volunteer to take a lie detector test**).
- Discipline you for refusing a lie detector test.
- Make a note or comment on your refusal to take a lie detector test.

YES they can search your locker if they tell you; if you're present; if you give consent; or with a search warrant.

RL&W RAINS, LUCIA & WILKINSON LLP
Attorneys & Counselors at Law