



Rights and Wrongs

A fearful public must turn to reluctant lawmakers to add balance and common sense to the Police Officer's Bill of Rights

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Frustrated by the inability to bring justice to clear examples of police misconduct caught on video, the public would do well to take a look at their state's police officers' "bill of rights," which their local law enforcement unions have successfully lobbied to implement and expand.

Typically, according to Cato Institute research, when a complaint is filed against an officer, department leadership decides whether to investigate. If it does, it must inform the officer and his union representative, whereupon the following protections that most people do not have are in place:

The officer involved gets a "cooling off" period before answering any questions, something not afforded to average citizens. Another extra-special right not provided to average citizens is before being interrogated the officer under suspicion is allowed to know the names of the people complaining against him or her.

And there's more. "Unlike a member of the public, the officer under investigation is to be interrogated 'at a reasonable hour,' with a union member present. Unlike a member of the public, the officer can only be questioned by one person during his interrogation. Unlike a member of the public, the officer can be interrogated only 'for reasonable periods,' which 'shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.' Unlike a member of the public, the officer under investigation cannot be 'threatened with disciplinary action' at any point during his interrogation," continues the report by Cato's Walter Olson, quoting from an October 2012 story published by Reason magazine called "Why Firing a Bad Cop Is Damn Near Impossible."

Nothing that the officer says can be used against him or her if he or she is threatened with being punishment for a perceived misdeed, Olson found. And if any of their basic and professional rights are violated, all charges against them could be dismissed. Because there is no federal officer bill of rights,

what happens after an interrogation of an officer under suspicion of committing a crime varies from state to state, but in every state the process is shrouded in secrecy.

Under nearly every law enforcement bill of rights, the Libertarian think tank concluded, “the following additional privileges are granted to officers: Their departments cannot publicly acknowledge that the officer is under investigation; if the officer is cleared of wrongdoing or the charges are dropped, the department may not publicly acknowledge that the investigation ever took place, or reveal the nature of the complaint. The officer cannot be questioned or investigated by ‘non-government agents,’ which means no civilian review boards. If the officer is suspended as a result of the investigation, he or she must continue to receive full pay and benefits until his or her case is resolved. In most states, the charging department must subsidize the accused officer’s legal defense.”

Historian Linda Gordon explores the present-day corruption of the function of police unions that she maintains “... operate more like criminal syndicates. They not only resist external oversight but enforce collusion with their corruption among their members.”

Historically, police organizations in the 19th century were used to bust up labor protests. In more recent times, Gordon states, quoting the work of criminologist Samuel Walker, professor emeritus of criminal justice at the University of Nebraska at Omaha, who believes police unions have gained strength in responding violently to civil rights protests. As police misbehave, their unions, in essence, function as defenders of their misbehavior, Walker states.

“Because their official understanding of their job is stopping criminals, they begin to understand anyone they engage with as a criminal,” Gordon concludes. “Since their work is separate from judicial processes, nothing remains to remind them of the presumption of innocence. They are accountable only to a chain of command in which the union officers often sit at the top.”

While law enforcement groups argue that these statutes protect public servants in a dangerous profession, critics have long contended that these types of restrictions only further fuel a heightening distrust of police.

In a story published last year, the *Modesto Bee* found that the state police officer’s bill of rights, signed into law in 1978 by Gov. Jerry Brown in his first term as the state’s chief executive, has some of the country’s tightest restrictions on law-enforcement records. “More than 35 years later, the 1978 law is part of a nearly impenetrable barrier restricting public access to law enforcement disciplinary records and civilian complaints in California,” the *Bee*’s Jim Miller reports.

“[O]pen-records advocates say California residents today have some of the least access to law enforcement records of anywhere in the country,” Miller writes. “Bills to tighten the restrictions, pushed by politically influential law enforcement unions, routinely sail through the Legislature. Attempts to provide more disclosure have been few and unsuccessful.”

The solution is as obvious as it will be difficult to apply. Clearly, the United States — not each state — needs to build a system that provides officers with some protections, but not at the expense of holding some of those officers legally accountable for violating people’s basic civil and human rights.

The challenge will be loosening the gangster-like grip police unions have on department administrators and lawmakers at every level of government.