



**CALIFORNIA STATE ASSEMBLY
SELECT COMMITTEE ON POLICE REFORM**
Hearing: The Next Step: Understanding the Peace Officer Bill of Rights
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WRITTEN TESTIMONY OF MARIA PONOMARENKO

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Good morning, Chair Gipson and members. And thank you for inviting me to speak with you today on this very important topic.

I am a law professor at the University of Minnesota Law School, and I also am the co-founder and counsel at the Policing Project at New York University School of Law. The Policing Project works with police departments, community groups, and elected officials, to promote more equitable, just, and effective policing practices. We have worked in more than a dozen jurisdictions, including New York, Chicago, Los Angeles, Nashville, and Tucson.

Of particular relevance here, we also have drafted model state-level legislation on various policing issues—including on the sorts of accountability issues that are the subject of this and prior hearings.

I've been asked today to provide some background on the Peace Officers Bill of Rights ("POBR") in order to set the stage for the discussion to follow.

Background and Legislative History

The Peace Officers Bill of Rights gives officers a set of rights and protections, mostly having to do with the disciplinary process. Most of POBR's core provisions kick in when an officer is under investigation for misconduct. Some of the provisions codify basic sorts of due process protections—such as the basic requirement that officers have notice and an opportunity to be heard before discipline can be imposed. Other provisions, however, impose a much more rigid set of constraints on misconduct investigations, going well beyond what other public sector employees enjoy, at least as a matter of state law.

California was one of the first states to enact a Peace Officers' Bill of Rights. There are currently 20 states with these sorts of Officers' Bill of Rights Statutes. Maryland, which was the first to enact a police bill of rights statute, repealed it earlier this year. (In many states, the laws are referred to as LEOBORs, which is to say Law Enforcement Officers' Bills of Rights.)

California's POBR was originally enacted in 1976 in response to two overlapping sets of concerns. The first was the perception among line officers that police disciplinary processes were often arbitrary and grossly unfair. Officers complained that the likelihood and severity of discipline often had little to do with the seriousness of the allegations. But was instead driven by favoritism, media pressure, and many other factors outside an officer's control. Some officers got to operate with impunity because they were well-liked by their superiors. Others were subject to discipline for minor infractions that otherwise are ignored. Officers also expressed concern about their treatment during disciplinary investigations, including the use of threats and other coercive techniques to get officers to confess. POBR was designed to address these concerns by adding some degree of procedural formality to the disciplinary process—and ensuring that officers had an adequate opportunity to present their defense.

I start there because I think it's important to acknowledge these very real concerns—some of which persist among officers to this day.

The push to regularize the disciplinary process was also, however, a response to the demands for greater police accountability during the civil rights movement in the 1960s—and perhaps more importantly, the rise of civilian review boards and the push for greater community control of the police. In a number of other states, POBR provisions specifically limited civilian involvement in the disciplinary process. California's POBR does not expressly preclude civilian review. But the push for stronger procedural protections in the disciplinary process was undoubtedly spurred at least in part by greater public scrutiny of the police.

What POBR Does

Perhaps unsurprisingly, then, California's POBR includes a mix of fairly rudimentary procedural protections—along with some provisions that make it harder for the public to hold police accountable for misconduct.

For example, among the provisions that ensure basic procedural fairness is the requirement that officers be informed of the nature of the allegations against them prior to questioning. POBR also requires that any interrogation of a police officer take place at a reasonable hour—ideally while an officer is on duty—and that officers have an opportunity to take breaks from interrogation to attend to their physical needs. The statute also prohibits agencies from requiring officers to submit to a polygraph.

Other POBR provisions, however, may pose a more serious obstacle to accountability. For example, POBR generally requires that any investigation of an officer be completed within 1 year of when the agency learns of the alleged misconduct—which means that an officer may sometimes get a free pass if the agency is slow to act. Statutes of limitations for other public sector employees are typically closer to 3 years.

POBR also requires agencies to provide an officer with a transcript of the officer's interrogation, before the officer may be questioned a second time. This provision may make it more difficult to identify inconsistencies in an officer's story through multiple rounds of questioning.

Finally, POBR's various protections kick in whenever an officer is questioned about a matter that could potentially lead to discipline. This includes a formal investigation launched after a complaint has been filed. But it also potentially includes questioning by a supervisor immediately after a use of force incident. And as a result, can make it more difficult for supervisors to quickly develop an accurate picture of what occurred.

How California's POBR Compares to Other States

California's POBR lacks a number of the more troubling provisions that have drawn widespread criticism in other states.

For example, Maryland's LEOBOR—which was recently repealed—allowed an officer to delay interrogation for up to 10 days. Maryland's LEOBOR also required that the person interrogating a police officer be a sworn officer themselves—which essentially precluded civilian oversight entities from investigating allegations of misconduct.

Minnesota's statute prohibits local governments from giving a civilian review board the authority to make findings of fact regarding police misconduct, or to impose discipline on officers. Florida's LEOBOR, meanwhile, requires that officers be given access to the complaint and all witness statements and evidence against them before they can even be questioned. This, of course, gives officers an extraordinary degree of leeway to construct their version of events based on whatever it is that the evidence purports to show.

Other Barriers to Accountability

The last point I want to make is that POBR is not the only potential obstacle to holding officers accountable—and that eliminating certain provisions from POBR would not necessarily mean that they would cease to be a problem in the state.

In states without POBRs, a lot of the same sorts of provisions are contained instead in local collective bargaining agreements with police unions. And in fact, collective bargaining agreements often impose much stricter limitations on the disciplinary process than even the most expansive POBRs.

Lots of collective bargaining agreements impose mandatory waiting periods before an officer may be questioned. Or give officers access to all of the evidence against them before they may be questioned. Or prohibit any form of civilian review.



There are examples of at least some of these provisions in CBAs here in California—though it’s hard to know just how prevalent they are. In the absence of a state-level POBR, however, one might expect at least some of these provisions to become a lot more common.

In short, should this committee decide to propose amending or repealing portions of POBR, I would urge you to approach the matter holistically—and also prohibit these same provisions from being included in local CBAs.