

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 583 CS Correctional and Law Enforcement Officer Discipline
SPONSOR(S): Traviesa
TIED BILLS: **IDEN./SIM. BILLS:** SB 1552

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|-----------------------|-------------------|-----------------------|
| 1) <u>Criminal Justice Committee</u> | <u>7 Y, 1 N, w/CS</u> | <u>Cunningham</u> | <u>Kramer</u> |
| 2) <u>Governmental Operations Committee</u> | <u>5 Y, 0 N, w/CS</u> | <u>Mitchell</u> | <u>Williamson</u> |
| 3) <u>Justice Council</u> | <u></u> | <u></u> | <u></u> |
| 4) <u></u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

This bill creates two new requirements for any person preparing an investigative report or summary resulting from the investigation of a complaint involving a law enforcement officer or correctional officer. First, the preparer must verify that the contents of the report are true and accurate based upon the person's personal knowledge, information, and belief. Second, the report preparer must swear that he or she has not, or allowed another to, deprive the law enforcement officer or correctional officer of certain statutory rights. These requirements must be met prior to any determination as to whether to proceed with disciplinary action or to file disciplinary charges.

The bill also requires that all statements provided by a law enforcement officer or correctional officer during the course of a complaint investigation be made under oath. The bill permits prosecution for perjury if a law enforcement officer or correctional officer gives knowingly false statements when under investigation.

This bill does not appear to create, modify, or eliminate rulemaking authority.

This bill does not appear to have a fiscal impact on state or local government revenues. This bill does not appear to have a fiscal impact on state or local government expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill increases requirements for personnel investigating a complaint and preparing an investigative report involving law enforcement officers or correctional officers. The bill also increases the requirements for statements of law enforcement officers and correctional officers when a complaint is being investigated.

B. EFFECT OF PROPOSED CHANGES:

Rights of Law Enforcement Officers and Correctional Officers

Law enforcement officers¹ and correctional officers² have certain statutory rights and privileges while under investigation. Part VI of chapter 112, commonly known as the “Law Enforcement Officers’ Bill of Rights,” grants law enforcement officers and correctional officers specific rights when the officer is under investigation and subject to interrogation by members of his or her agency for any reason which could lead to disciplinary action, demotion or dismissal.³ If an agency fails to comply with the provisions of the Law Enforcement Officers’ Bill of Rights, an officer who is personally injured by such failure to comply may apply directly to the circuit court of the county where the agency is headquartered for an injunction to restrain and enjoin the violation and to compel performance of the agency’s duties.⁴ Such officer may also file a civil suit for damages.⁵

Investigative Reports

Section 112.533, Florida Statutes, requires law enforcement and correctional agencies to establish procedures for the receipt, investigation, and determination of complaints against law enforcement and correctional officers. These procedures vary from agency to agency. Yet, in most instances, agencies investigate when a complaint is filed against an officer and also generate investigative reports that summarize the agency’s findings.

There are currently criminal penalties for making false investigative reports.⁶ There is, however, no specific statutory requirement for the person preparing an investigative report involving a law enforcement officer or correctional officer to verify, pursuant to section 92.525, Florida Statutes,⁷ that the contents of the report are true and accurate based upon the preparer’s personal knowledge and belief. There also is not a statutory requirement that the person preparing an investigative report include any type of statement regarding compliance with the Law Enforcement Officer’s Bill of Rights.

¹ Fla. Stat. § 112.531(1) (2005) (“Any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to section 30.07, Florida Statutes.”).

² Fla. Stat. § 121.531(2) (2005) (“Any person, other than a warden, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution, including correctional probation officers.”).

³ See, e.g., Fla. Stat. § 112.532(1) (2005) (requiring the interrogation to be conducted at a reasonable hour, preferably at a time when the law enforcement officer or correctional officer is on duty).

⁴ Fla. Stat. § 112.534 (2005).

⁵ Fla. Stat. § 112.532(3) (2005).

⁶ See, e.g., Fla. Stat. § 837.06, F.S., (whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his/her official duties is guilty of a second degree misdemeanor); s. 838.022, F.S., (It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another, to falsify, or cause another person to falsify, any official record or official document); s. 944.33, F.S., (If any prison inspector knowingly makes a false report of his/ her findings, he/she shall is guilty of a third degree felony).

⁷ Fla. Stat. § 92.525 (2005) (provides two methods of document verification (by oath or affirmation or by the signing of a written declaration) and provides that it is a third degree felony to knowingly make a false declaration).

Similarly, there is no requirement that a statement of the law enforcement officer or correctional officer be made under oath or subject to prosecution for perjury.

Additional Requirements for Complaint Investigators

This bill creates two new requirements for the person preparing any investigative report or summary⁸ resulting from the investigation of a complaint involving a law enforcement officer or correctional officer:

1. Verify⁹ that the contents of the report are true and accurate based upon the person's personal knowledge, information, and belief; and
2. Include the following sworn¹⁰ statement:

"I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss. 112.532 and 112.533, Florida Statutes."

The bill further requires completion of the verification and statement prior to the determination as to whether to proceed with disciplinary action or to file disciplinary charges.

Additional Requirements for Officers

The bill also creates a new requirement for law enforcement officers and correctional officers: that all statements¹¹ provided during the course of a complaint investigation be made under oath pursuant to section 92.525, Florida Statutes, and subject to prosecution for perjury if a knowingly false statement is given.¹²

C. SECTION DIRECTORY:

Section 1: Amends section 112.533, Florida Statutes, to require verification of contents and sworn compliance with certain procedures by persons preparing investigative reports or summaries; also requires sworn statements subject to prosecution for perjury for officers being investigated.

Section 2: Provides that this bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state government expenditures.

⁸ Fla. HB 583 CS (2005) (These requirements apply only if there is such a report and "regardless of form.").

⁹ Fla. HB 583 CS (2005) (pursuant to section 92.525, Florida Statutes).

¹⁰ *Id.*

¹¹ Fla. HB 583 CS (2005) (This requirement applies regardless of form.).

¹² Fla. HB 583 CS (2005) (This requirement is included as part of provisions which allow the officer who is the subject of a complaint, along with legal counsel or other representative, to review the complaint and all statements immediately prior to the beginning of an investigative interview.).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There does not appear to be a direct economic impact on the private sector.

D. FISCAL COMMENTS:

There are no fiscal comments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the municipalities or counties to spend funds or take action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

There do not appear to be any other constitutional issues.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There are not any drafting issues or other comments.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Criminal Justice Committee

On March 22, 2006, the Criminal Justice Committee adopted a strike-all amendment to the bill and reported the bill favorably with committee substitute. The strike-all amendment removed section 2 of the original bill, which required agencies to maintain a log documenting the receipt of complaints alleging a violation of an officer's rights; investigate and issue a report regarding such complaints; remove the investigating officer who is the subject of the complaint from internal investigative responsibilities and take other appropriate disciplinary actions if the report sustained a violation; and place the investigative report and supporting documents into the removed investigator's personnel file, invalidate the original investigation, and reinvestigate the original complaint if the reported sustained a violation. In addition, the strike-all requires certain investigative reports to include a statement relating to compliance with the Law Enforcement Officer's Bill of Rights.

Governmental Operations Committee

On April 5, 2006, the Governmental Operations Committee adopted an amendment to the bill and reported the bill favorably with committee substitute. The amendment required all statements provided by a law enforcement or correctional officer during the course of a complaint investigation to be made under oath. The

amendment also provided that knowingly false statements given by a law enforcement officer or correctional officer may result in a prosecution for perjury.