

Committee on Criminal Justice

CS/HB 95 — Rights of Law Enforcement Officers and Correctional Officers

by Judiciary Committee and Reps. Duggan, Plasencia, and others (CS/CS/SB 618 by Appropriations Committee on Criminal and Civil Justice; Criminal Justice Committee; and Senator Yarborough)

The bill addresses a “Brady identification system,” which the bill defines in s. 112.531, F.S., as a list or identification, in whatever form, of the name or names of law enforcement officers or correctional officers (officers) about whom a “prosecuting agency” (defined in s. 112.531, F.S.) is in possession of impeachment evidence as defined by decision, statute, or rule. This system is intended to address *Brady v. Maryland*, 373 U.S. 83 (1963), which involves disclosure to the defense of exculpatory evidence, and cases after *Brady*.

The bill amends s. 112.532, F.S., to prohibit the officer’s employing agency from discharging or taking any disciplinary action against the officer solely as a result of a prosecuting agency determining that the officer’s name and identification should be included in a Brady identification system. However, the employing agency may discharge or take any disciplinary action against the officer based on the underlying actions of the officer which resulted in the officer’s name being included in a Brady identification system. If a collective bargaining agreement applies, the actions taken by the officer’s employing agency must conform to the rules and procedures adopted by the collective bargaining agreement.

The bill creates s. 112.536, F.S., which specifies that a prosecuting agency is not required to maintain a Brady identification system. A prosecuting agency may determine that its obligations under *Brady* are better fulfilled through any such procedures that agency otherwise chooses to utilize.

The officer’s employing agency shall forward all sustained and finalized internal affairs complaints relevant to impeachment to the prosecuting agency in the circuit where the employing agency is located to assist the prosecuting agency in complying with *Brady* obligations. The employing agency must also notify the officer of these complaints.

A prosecuting agency that maintains a Brady identification system must adopt written policies that, at a minimum, require the following rights:

- With some specified exceptions, receiving written notice, by mail or e-mail, to the officer’s current or last known employing agency before or contemporaneously with the officer’s name and information being included in a Brady identification system.
- Requesting reconsideration of the officer’s inclusion in such system and submitting supporting documents and evidence.

The bill contains procedural requirements when an officer is removed from a Brady identification system and authorizes the officer to petition the court for a writ of mandamus to compel the prosecuting agency to comply with requirements of the bill. It also limits the scope of review to the procedural requirements set forth in the bill.

Finally, the bill specifies that these rights and requirements do not:

- Require a prosecuting agency to give notice to or provide an opportunity for review and input from the officer if the information in a Brady identification system is a criminal conviction that may be used for impeachment or a sustained and finalized internal affairs complaint that may be used for impeachment;
- Limit the duty of a prosecuting agency to produce Brady evidence in all cases as required by law;
- Limit or restrict a prosecuting agency's ability to remove the name and information of an officer from the system if inclusion is no longer proper for identification; or
- Create a private cause of action against a prosecuting agency or its employees, other than the described writ of mandamus.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.

Vote: Senate 39-0; House 93-17