

By Representative Healey

1 A bill to be entitled
2 An act relating to law enforcement and
3 correctional officers; amending s. 112.531,
4 F.S.; adding part-time employees to the
5 definitions of the terms "law enforcement
6 officer" and "correctional officer" and
7 defining the term "willful and knowing";
8 amending s. 112.532, F.S.; authorizing an
9 officer under interrogation to record the
10 interrogation and keep the recording;
11 prohibiting the use of specified information in
12 any administrative proceeding against an
13 officer; providing that the communication
14 between an officer under investigation and his
15 or her representative is confidential; amending
16 s. 112.533, F.S.; authorizing an officer to
17 review recorded statements of complainants and
18 nonincarcerated witnesses; requiring written or
19 recorded statements by complainants and
20 nonincarcerated witnesses to be under oath;
21 prohibiting a law enforcement or correctional
22 agency from placing certain material in an
23 officer's personnel file; amending s. 112.534,
24 F.S.; providing that an officer may apply to
25 the circuit court for a determination of a
26 willful and knowing violation of his or her
27 rights; amending s. 901.15, F.S.; providing
28 additional arrest powers for certain state law
29 enforcement officers; amending s. 491.0147,
30 F.S.; providing for confidentiality of
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1 communications in certain circumstances;
2 providing an effective date.

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4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. Section 112.531, Florida Statutes, is
7 amended to read:

8 112.531 Definitions.--As used in this part, the term:

9 (1) "Law enforcement officer" means any person, other
10 than a chief of police, who is employed full time or part time
11 by any municipality or the state or any political subdivision
12 thereof and whose primary responsibility is the prevention and
13 detection of crime or the enforcement of the penal, traffic,
14 or highway laws of this state; and includes any person who is
15 appointed by the sheriff as a deputy sheriff pursuant to s.
16 30.07.

17 (2) "Correctional officer" means any person, other
18 than a superintendent, who is appointed or employed full time
19 or part time by the state or any political subdivision thereof
20 whose primary responsibility is the supervision, protection,
21 care, custody, or control of inmates within a correctional
22 institution; and includes correctional probation officers, as
23 defined in s. 943.10(3). However, the term "correctional
24 officer" does not include any secretarial, clerical, or
25 professionally trained personnel.

26 (3) "Willful and knowing," when applied to a
27 violation, means in a manner that involves all of the
28 following criteria, as determined by a court:

29 (a) An officer's right under this part was violated;

30 (b) The interrogating officer knew or should have
31 known that the conduct violated this part; and

1 (c) The violation was substantive in nature.

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3 When a person commits a willful and knowing violation of the
4 rights of an officer under this part, there is a presumption
5 that the person did not act in good faith or use due care.

6 Section 2. Paragraphs (g) and (i) of subsection (1) of
7 section 112.532, Florida Statutes, are amended, and subsection
8 (6) is added to that section, to read:

9 112.532 Law enforcement officers' and correctional
10 officers' rights.--All law enforcement officers and
11 correctional officers employed by or appointed to a law
12 enforcement agency or a correctional agency shall have the
13 following rights and privileges:

14 (1) RIGHTS OF LAW ENFORCEMENT OFFICERS AND
15 CORRECTIONAL OFFICERS WHILE UNDER INVESTIGATION.--Whenever a
16 law enforcement officer or correctional officer is under
17 investigation and subject to interrogation by members of his
18 or her agency for any reason which could lead to disciplinary
19 action, demotion, or dismissal, such interrogation shall be
20 conducted under the following conditions:

21 (g) The formal interrogation of a law enforcement
22 officer or correctional officer, including all recess periods,
23 shall be recorded, and there shall be no unrecorded questions
24 or statements. In addition to any recording made by the
25 agency, the officer being interrogated must be allowed to
26 record the interrogation through the use of a tape recorder
27 and to retain the tape of the recording. The officer must
28 provide his or her own tape recorder and tape.

29 (i) At the request of any law enforcement officer or
30 correctional officer under investigation, he or she shall have
31 the right to be represented by counsel or any other

1 representative of his or her choice, who shall be present at
2 all times during such interrogation whenever the interrogation
3 relates to the officer's continued fitness for law enforcement
4 or correctional service. Once the law enforcement officer or
5 correctional officer who is under investigation requests to
6 have an attorney or representative present, any communication
7 between the representative and the person who is under
8 investigation is confidential communication as provided under
9 s. 112.313(8).

10 (6) VIOLATION OF RIGHTS.--

11 (a) Information that is developed as a result of, or
12 directly derived from, a willful and knowing violation of the
13 rights afforded by this part is inadmissible and may not be
14 used in any manner in an administrative proceeding against the
15 law enforcement officer or correctional officer whose rights
16 were violated and from whom the information was gained.
17 However, this paragraph does not limit the right of an agency
18 to discipline or to pursue criminal charges against an
19 officer.

20 (b) If an informal or factfinding inquiry has occurred
21 before a formal investigation of an officer is initiated and
22 if, in connection with the inquiry, the officer was not
23 afforded rights consistent with this part, information or
24 statements derived from the inquiry may not be used as the
25 basis for discipline against the officer and may not be used
26 in any manner in an administrative proceeding against the
27 officer. However, this provision does not limit the right of
28 an agency to discipline or to pursue criminal charges against
29 an officer.

30 Section 3. Subsection (2) of section 112.533, Florida
31 Statutes, 1996 Supplement, is amended, present subsection (3)

1 of that section is redesignated as subsection (4), and a new
2 subsection (3) is added to that section, to read:

3 112.533 Receipt and processing of complaints.--

4 (2)(a) A complaint filed against a law enforcement
5 officer or correctional officer with a law enforcement agency
6 or correctional agency and all information obtained pursuant
7 to the investigation by the agency of such complaint shall be
8 confidential and exempt from the provisions of s. 119.07(1)
9 until the investigation ceases to be active, or until the
10 agency head or the agency head's designee provides written
11 notice to the officer who is the subject of the complaint,
12 either personally or by mail, that the agency has either:

13 1. Concluded the investigation with a finding not to
14 proceed with disciplinary action or to file charges; or

15 2. Concluded the investigation with a finding to
16 proceed with disciplinary action or to file charges.

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18 Notwithstanding the foregoing provisions, the officer who is
19 the subject of the complaint may review the complaint and all
20 written or otherwise recorded statements made by or on behalf
21 of the complainant and witnesses immediately prior to the
22 beginning of the investigative interview. If a witness to a
23 complaint is incarcerated in a correctional facility and may
24 be under the supervision of, or have contact with, the officer
25 under investigation, only the names and written or otherwise
26 recorded statements of the complainant and nonincarcerated
27 witnesses may be reviewed by the officer under investigation
28 immediately prior to the beginning of the investigative
29 interview. All written or otherwise recorded statements made
30 by complainants and nonincarcerated witnesses, including those
31 statements prepared by others and signed by a complainant or

1 nonincarcerated witness, must be accompanied by a sworn
2 written statement indicating that, to the best of the
3 complaining party's knowledge, the statements are true. If the
4 complainant refuses to give a sworn statement, the
5 investigation will be terminated. However, these requirements
6 for sworn statements do not apply when the complaining party
7 is anonymous.

8 (b) This subsection does not apply to any public
9 record which is exempt from public disclosure pursuant to s.
10 119.07(3). For the purposes of this subsection, an
11 investigation shall be considered active as long as it is
12 continuing with a reasonable, good faith anticipation that an
13 administrative finding will be made in the foreseeable future.
14 An investigation is ~~shall be~~ presumed to be inactive if no
15 finding is made within 45 days after the complaint is filed.

16 (c) Notwithstanding other provisions of this section,
17 the complaint and information shall be available to law
18 enforcement agencies, correctional agencies, and state
19 attorneys in the conduct of a lawful criminal investigation.

20 (3) An employee has the right to review his or her
21 official personnel file at any reasonable time under the
22 supervision of the designated records custodian. An employee
23 may attach to the file a concise statement in response to any
24 items included in the file and must be sent a copy of any
25 derogatory material that is placed in the file. Furthermore,
26 information that pertains to unfounded or unsubstantiated
27 anonymous complaints must not be put in an officer's personnel
28 file or any complaint profile mechanism.

29 Section 4. Section 112.534, Florida Statutes, is
30 amended to read:

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1 112.534 Failure to comply.--If any law enforcement
2 agency or correctional agency fails to comply with the
3 requirements of this part, a law enforcement officer or
4 correctional officer employed by or appointed to such agency
5 who is adversely affected ~~personally injured~~ by such failure
6 to comply may apply directly to the circuit court of the
7 county wherein such agency is headquartered and permanently
8 resides for an injunction to restrain and enjoin such
9 violation of the provisions of this part and to compel the
10 performance of the duties imposed by this part and for a
11 declaration as to whether the officer's rights under this part
12 have been violated willfully and knowingly. An action brought
13 under this section must be handled expeditiously by the court
14 so as to protect the rights of the officer bringing the
15 action.

16 Section 5. Subsection (11) of section 901.15, Florida
17 Statutes, 1996 Supplement, is amended to read:

18 901.15 When arrest by officer without warrant is
19 lawful.--A law enforcement officer may arrest a person without
20 a warrant when:

21 (11) He or she is employed by the State of Florida as
22 a law enforcement officer as defined in s. 943.10(1) or
23 part-time law enforcement officer as defined in s. 943.10(6),
24 and:

25 (a) He or she reasonably believes that a felony
26 involving violence has been or is being committed and that the
27 person to be arrested has committed or is committing the
28 felony;

29 (b) While engaged in the exercise of his or her state
30 law enforcement duties, he or she reasonably believes that a
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1 felony has been or is being committed or that a misdemeanor
2 has been committed in his or her presence; or

3 (c) A felony warrant for the arrest has been issued
4 and is being held for execution by another peace officer.

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6 Notwithstanding any other provision of law, the authority of
7 an officer under ~~pursuant to~~ this subsection is statewide.
8 This subsection does not limit the arrest authority conferred
9 on such an officer by any other provision of law.

10 Section 6. Section 491.0147, Florida Statutes, is
11 amended to read:

12 491.0147 Confidentiality and privileged
13 communications.--

14 (1) Any communication between any person licensed or
15 certified under this chapter and his or her patient or client
16 shall be confidential. This secrecy may be waived under the
17 following conditions:

18 (a)~~(1)~~ When the person licensed or certified under
19 this chapter is a party defendant to a civil, criminal, or
20 disciplinary action arising from a complaint filed by the
21 patient or client, in which case the waiver shall be limited
22 to that action.

23 (b)~~(2)~~ When the patient or client agrees to the
24 waiver, in writing, or, when more than one person in a family
25 is receiving therapy, when each family member agrees to the
26 waiver, in writing.

27 (c)~~(3)~~ When there is a clear and immediate probability
28 of physical harm to the patient or client, to other
29 individuals, or to society and the person licensed or
30 certified under this chapter communicates the information only

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1 to the potential victim, appropriate family member, or law
2 enforcement or other appropriate authorities.
3 (2) Any communication that occurs during the course of
4 a session of critical incident stress debriefing or similar
5 session involving an equivalent, recognized program using peer
6 counseling is to be confidential if the session is under the
7 direct or indirect supervision of a person who is licensed or
8 certified under this chapter and if those involved in the
9 communication are officers certified under s. 943.10. This
10 secrecy may be waived as provided in subsection (1).

11 Section 7. This act shall take effect October 1, 1997.

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14 SENATE SUMMARY

15 Adds part-time employees to the definitions of the terms
16 "law enforcement officer" and "correctional officer" and
17 defines the term "willful and knowing," for the purposes
18 of part VI of ch. 112, F.S. Authorizes an officer who is
19 under interrogation to record the interrogation and keep
20 the recording. Prohibits the use of specified information
21 in any administrative proceeding against an officer.
22 Provides that the communication between an officer under
23 investigation and his or her representative is
24 confidential. Authorizes an officer to review recorded
25 statements of complainants and nonincarcerated witnesses.
26 Requires written or recorded statements by complainants
27 and nonincarcerated witnesses to be under oath. Prohibits
28 a law enforcement or correctional agency from placing in
29 an officer's personnel file any information pertaining to
30 unfounded or unsubstantiated anonymous complaints.
31 Provides that an officer may apply to the circuit court
for a determination of a willful and knowing violation of
his or her rights. Provides additional arrest powers for
certain state law enforcement officers, for misdemeanors
committed in the officer's presence. Provides for
confidentiality of communications that occur during a
session of critical incident stress debriefing or the
equivalent thereof, under specified conditions.