

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 18, 1998 Revised: _____

Subject: Law Enforcement and Correctional Officers

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Barrow</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>EE</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 2012 would provide that law enforcement or correctional officers under investigation by the employing agency, who are interrogated, shall be given a tape recording of that interrogation no later than the end of the next business day. In addition, law enforcement and correctional officers would have the right to review their personnel files at any reasonable time, and attach a written response to any derogatory information contained in the personnel file.

This bill would authorize a law enforcement officer, correctional officer, or correctional probation officer, who has resigned due to the officer's appointment or election to office, to continue to participate in any training and educational programs approved by the Criminal Justice Standards and Training Commission of the Florida Department of Law Enforcement. In this way, the person elected or appointed to office could retain active certification as an officer without violating the constitutional prohibition against dual office-holding.

This bill would be effective upon becoming a law.

This bill would substantially amend the following sections of the Florida Statutes: 112.532, 112.533, and 943.135.

II. Present Situation:

Currently, s. 112.532 (1), F.S., enumerates certain rights of law enforcement and correctional officers who are being investigated by their employing agency, and who may as a result be subject to disciplinary action or dismissal. These rights include that any interrogation must be conducted at a reasonable time, in an appropriate location, and that the officer must be informed of the nature of the investigation and the identity of the complainants. The statute also describes the

circumstances where representation by counsel is appropriate, and requires that any interrogation sessions be recorded. There is, however, no specific requirement that the officer being interrogated receive a copy of the tape recording.

Section 112.533, F.S., provides for the receipt and processing of complaints against law enforcement or correctional officers. The law enforcement agency must institute a system for the receipt, investigation, and determination of complaints received. Information obtained by the agency pursuant to an investigation must remain confidential until the agency concludes the investigation, and decides whether or not to file charges. This statutory section currently makes no reference to the officers' personnel files or what materials may be contained within these files. Chapter 943, F.S., establishes minimum qualifications, training requirements, and standards for law enforcement, correctional, and correctional probation officers employed by criminal justice agencies in Florida.

Section 943.135, F.S., provides that the Criminal Justice Standards and Training Commission (the "Commission") shall by rule adopt a program that requires all officers, as a condition of continuing employment, to receive periodic commission-approved continuing training and education. Section 943.1395, F.S., provides the certification requirements for reemployment, breaks in employment, and inactive status.

The Commission, within the Florida Department of Law Enforcement, administers the applicable provisions of Chapter 943, F.S., [ss. 943.085 - 943.257, F.S.], and is responsible for: *establishing* uniform standards for the training and employment of officers; *establishing and maintaining* officer training program curricula; *preparing and administering* officer certification examinations; *certifying* officers for employment or appointment; and *revoking* the certification of, or otherwise disciplining officers. The Florida Department of Law Enforcement (FDLE) serves as staff to the Commission.

The Commission has developed a basic recruit training program for each criminal justice discipline. The Commission has established, by rule, the minimum number of hours of instruction and the types of courses required for each basic recruit training program. Individual employing agencies may require applicants to complete a training program that requires additional hours of instruction.

Article II, section 5 (a), *Florida Constitution*, provides:

No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this state.

This constitutional provision prohibits a person from simultaneously holding more than one "office" under the government of the state and the counties and municipalities. Even though the terms "office" or "officer" are not defined, it is well established that a full-time, part-time, auxiliary, or certified reserve police officer is an "officer" for purposes of Article II, section 5(a),

Florida Constitution. (Op. Att’y Gen. Fla. 77-63, (1977). *See also*, Op. Att’y Gen. Fla. 86-105 (1986), concluding that auxiliary police officers who did not have the authority to make arrests but who were certified, carried firearms, and assisted regular police officers in carrying out their duties were “officers.” *Compare*, Op. Att’y Gen. Fla. 89-10 (1989), concluding that an administrative law enforcement position, having no law enforcement certification requirements or arrest powers and not authorized to independently exercise the sovereign powers of the state, was not an office but an employment for purposes of dual office-holding.)

The *Florida Constitution* contains several exceptions to its prohibition against dual office-holding. The constitutional provision expressly states that a notary public or military officer may hold another office. In addition any officer may be a member of a constitutional revision commission or constitutional convention. (*See*, Art. XI, s. 2, *Fla. Const.*, providing for the establishment of a constitutional revision commission every 20 years; and Art. XI, s. 4, *Fla. Const.*, reserving to the people the power to call a convention to consider a revision of the entire Constitution.)

Statutory bodies having only advisory powers are also exempted from the constitutional dual office-holding prohibition. It is this exception that has been the subject of interpretation both by the courts and by the Attorney General’s Office.

There are consequences of a public officer accepting a second office in violation of the constitutional dual office-holding prohibition. The Florida Supreme Court in a 1970 decision set forth the general rule that “[t]he acceptance of an incompatible office by one already holding office operates as a resignation of the first.” *Holley v. Adams*, 238 So.2d 401, 407 (Fla. 1970).

The Criminal Justice Standards and Training Commission is charged with the responsibility of establishing uniform minimum standards for the employment and training of all officers in the various criminal justice disciplines. s. 943.12, F.S. The Commission is further responsible for the issuance and revocation of certificates for persons qualified for employment or appointed as an officer. s. 943.1395, F.S. No person may be employed as a full-time, part-time, or auxiliary officer in any criminal justice discipline until he has obtained such a certificate of compliance. s. 943.1395, F.S. If any officer fails to meet the training requirements of continued employment and the rules and regulations of the Commission, such officer’s authority to act and function as an officer is limited and his power to arrest is no greater than that of a private citizen. *See*, Op. Att’y Gen. Fla. 73-398 (1973); Op. Att’y Gen. Fla. 73-14 (1973).

III. Effect of Proposed Changes:

Senate Bill 2012 would amend s. 112.532, F.S., to require that a copy of the recording of a formal interrogation of a law enforcement officer or correctional officer must be given to the interrogated officer no later than 72 hours after the request. The calculation of this time period for the provision of the recording of the interrogation would exclude holidays and weekends.

The bill also creates a new subsection in s. 112.533, F.S., to provide that a law enforcement or correctional officer has the right to review his or her personnel file at any reasonable time and may attach a statement in response to any derogatory material that is placed in the file.

Senate Bill 2012 would amend s. 943.135, F.S., to authorize any law enforcement officer, correctional officer, or correctional probation officer, who has resigned due to the constitutional dual office-holding prohibition, to retain active certification by participating in continuing training and education approved by the commission. Thus, the officer's law enforcement certification would remain valid during the tenure of the elected or appointed office.

For an officer to qualify for this special status, the following must apply:

- ▶ the officer's resignation must be for the sole purpose of serving in an office to which he has been elected or appointed;
- ▶ the officer must have been employed or associated with an agency authorized by ch. 943, relating to the Florida Department of Law Enforcement;
- ▶ the officer was not subject to an internal investigation or employment action to discipline or dismiss by the agency;
- ▶ the officer was not subject to a state or federal criminal investigation or prosecution; and
- ▶ the officer was not subject to an investigation or action against his certification by the commission.

The officer would have to become associated or sponsored by a law enforcement agency for the *sole* purpose of continuing the training requirements. However, such association would not be considered "employment" and, therefore, would not violate the constitutional prohibition against dual office-holding.

The legislation sets forth duties for the employing agency that receives the officer's resignation for the purpose of avoiding the dual office-holding prohibition and the sponsoring agency that allows the person to continue the statutorily mandated educational and training requirements. Therefore, the commission would be able to monitor the person's continued eligibility to maintain this newly created special status.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The constitutional prohibition against dual office-holding is contained in Art. II, s. 5 (a), *Florida Constitution*, which provides in pertinent part that, “[n]o person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein. . . .”

Senate Bill 2012 appears to allow an officer in a criminal justice discipline who has been elected or appointed to serve in another position under the state, counties, and municipalities to maintain officer certification without violating this constitutional dual office-holding prohibition.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None identified.

C. Government Sector Impact:

There would not be a fiscal impact on the sponsoring law enforcement agency if the agency requires the individual to be responsible for the costs associated with the continuing training and education programs. However, the legislation does not prohibit the sponsoring agency from paying these costs.

It is unclear as to who would pay for the tapes to provide an officer if the officer requests a copy of the interrogation. There appears to be nothing that would prohibit the agency from assessing the cost of the tape and a recording fee to the officer if the agency chooses. However, if law enforcement agencies have to pay these costs, there would be an indeterminate negative fiscal impact upon law enforcement agencies and ultimately the cities and counties that fund the agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
