

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 23, 1998 Revised: _____

Subject: Law Enforcement & Correctional Officer

	<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/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 346 would provide authority for full-time law enforcement and correctional officers to review any recorded statements made by complainants or witnesses to alleged misconduct of the officer under certain circumstances. Clarification is provided concerning the right of an agency to discipline or pursue criminal charges against an officer. Criminal penalties are provided for an interrogator of an officer who willfully and knowingly refuses, with corrupt intent, to comply with Part VI of Chapter 112, F.S. The CS would take effect upon becoming law.

This CS would substantially amend the following sections of the Florida Statutes: 112.532, 112.533, and 112.534.

II. Present Situation:

Part VI of Chapter 112, F.S., provides certain rights and privileges to *full-time* law enforcement and correctional officers. Therein the law provides the rights of law enforcement officers and correctional officers who are being investigated by their employing agency, and who may as a result, be subject to disciplinary action or dismissal. *See* s. 112.532 (1), F.S.

Under this part of the statutes, for purposes of the applicability of the officer's bill of rights and privileges, "law enforcement officer" is defined as: 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 s. 30.07, F.S. *See* s. 112.531 (1), F.S. "Correctional officer" is defined as: any person, other than a superintendent, 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; and includes correctional probation officers, as defined in s. 943.10 (3), F.S. However, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel. *See* s. 112.531 (2), F.S.

The rights provided in Part VI of Chapter 112, F.S., include the provision that any interrogation must be conducted at a reasonable time, in an appropriate location, the officer must be informed of the nature of the investigation, the identity and affiliation of each person present at the interrogation, and the identity of the complainants. The manner and "tone" in which an interrogation shall take place is also provided.

The statute also describes the circumstances when the provision of reading one's *Miranda* rights is appropriate, when representation by counsel is appropriate, and when any interrogation sessions must be recorded. There is, however, no specific requirement that the officer being interrogated receive a copy of the tape recording. The officer who is subject to a complaint is currently allowed to review the complaint and all written statements made by the complainant and witnesses immediately prior to the beginning of the investigative interview.

Section 112.533, F.S., provides for the receipt and processing of complaints against law enforcement or correctional officers. Law enforcement agencies must have in place a system for the receipt, investigation, and determination of complaints received against its officers. Information obtained pursuant to an investigation by the agency is exempt from the provisions of s. 119.07 (1), F.S., and 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.

Section 112.534, F.S., provides that if any law enforcement or correctional agency fails to comply with requirements for internal investigations and interrogations, any officer who is "personally injured" by such failure to comply may apply to the circuit court for an injunction to restrain and enjoin such violations.

The Criminal Justice Standards and Training Commission administers the applicable provisions of Chapter 943, 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 serves as staff to the Criminal Justice Standards and Training Commission.

III. Effect of Proposed Changes:

It would clarify that the officer's bill of rights and privileges which is provided in s. 112.532, F.S., does not limit the right of an agency to discipline or pursue the criminal charges against a law enforcement officer or a correctional officer.

The CS would provide authority for full-time law enforcement and correctional officers to review any recorded statements made by complainants or witnesses of alleged misconduct of the officer immediately prior to the beginning of the investigative interview. The CS would limit the instances in which an officer could review the complaint against him or her or statements made by the complainant or witnesses to those that could lead to suspension, demotion, or dismissal. To review the complaint or any statements by complainants or witnesses, the officer must request to review the materials in writing.

Criminal penalties would be provided for an interrogator of an officer who willfully and knowingly refuses, with corrupt intent, to comply with Part VI of Chapter 112, F.S. If an interrogator willfully and knowingly refuses, with corrupt intent, to comply with the requirements of this part, he or she would commit a first-degree misdemeanor, which is punishable by up to one year in jail and up to a \$1,000 fine.

For purposes of the criminal offense that is created relating to interrogators of law enforcement and correctional officers, “willfully and knowingly refuses” means circumstances where either the officer being interrogated or his or her representative objects to a specific violation of Part VI of Chapter 112, F.S., and the interrogator continues the violation after such objection is made by the officer or his counsel. “Corrupt intent” means that such actions of the interrogator were done with the knowledge that the act was wrongful and with improper motives.

The CS would take effect upon becoming law.

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:

It is possible that the definition for “corrupt intent” is too vague to pass constitutional muster. The term is defined as an act that is done with the knowledge that the act is “wrongful” and with “improper motives.” Both, but particularly the latter term may not be found by a court to be clear enough to place a person on sufficient notice as to what conduct is proscribed by law.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None anticipated.

C. Government Sector Impact:

It is unknown what the fiscal impact there would be, if any, upon agencies or the governmental entities that fund them.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.