

By Senators Campbell, Gutman, Dyer and Klein

33-256-98

See HB

1                                   A bill to be entitled  
 2           An act relating to law enforcement and  
 3           correctional officers; amending s. 112.531,  
 4           F.S.; redefining the terms "law enforcement  
 5           officer" and "correctional officer" to include  
 6           part-time officers; defining the term "willful  
 7           and knowing"; amending s. 112.532, F.S.;  
 8           revising language with respect to the rights of  
 9           law enforcement and correctional officers;  
 10          requiring certain officers in charge of an  
 11          investigation to be certified; authorizing an  
 12          officer to bring a civil action against an  
 13          agency for a willful and knowing violation of  
 14          part VI of chapter 112, F.S.; providing for  
 15          costs and attorney's fees; amending s. 112.533,  
 16          F.S.; authorizing officers to review complaints  
 17          and all written or otherwise recorded  
 18          statements made; authorizing an officer to  
 19          review his or her personnel file under certain  
 20          circumstances; authorizing the inclusion of  
 21          certain statements; amending s. 112.534, F.S.;  
 22          revising language with respect to the failure  
 23          of an agency to comply with the provisions of  
 24          part VI of chapter 112, F.S.; providing an  
 25          effective date.

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

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 29           Section 1. Section 112.531, Florida Statutes, is  
 30 amended to read:

31           112.531 Definitions.--As used in this part, the term:

1           (1) "Law enforcement officer" means any person, other  
2 than a chief of police, who is employed full time or part time  
3 by any municipality or the state or any political subdivision  
4 thereof and whose primary responsibility is the prevention and  
5 detection of crime or the enforcement of the penal, traffic,  
6 or highway laws of this state; and includes any person who is  
7 appointed by the sheriff as a deputy sheriff pursuant to s.  
8 30.07.

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

18           (3) "Willful and knowing," when applied to a  
19 violation, means those circumstances in which a court  
20 determines that all three of the following criteria are met:

21           (a) An officer's rights under this part were violated.

22           (b) The interrogating officer knew or should have  
23 known the conduct violated this part.

24           (c) The violation was substantive in nature.

25  
26 Furthermore, when a person commits a willful and knowing  
27 violation of the rights of an officer under this part, there  
28 shall be a presumption that the violator did not act in good  
29 faith or use due care.

30           Section 2. Paragraph (c) of subsection (1) of section  
31 112.532, Florida Statutes, is amended, paragraph (j) is added

1 to said subsection, and subsection (3) of said section is  
2 amended, to read:

3 112.532 Law enforcement officers' and correctional  
4 officers' rights.--All law enforcement officers and  
5 correctional officers employed by or appointed to a law  
6 enforcement agency or a correctional agency shall have the  
7 following rights and privileges:

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

15 (c) The law enforcement officer or correctional  
16 officer under investigation shall be informed of the rank,  
17 name, and command of the officer in charge of the  
18 investigation, the interrogating officer, and all persons  
19 present during the interrogation. All questions directed to  
20 the officer under interrogation shall be asked by and through  
21 one interrogator at any one time. The officer in charge of the  
22 investigation and the interrogating officer must be actively  
23 certified officers as defined in s. 943.10(1), (2), or (3).

24 (j) Notwithstanding the rights and privileges provided  
25 by this section, nothing in this section shall limit the right  
26 of an agency to discipline or to pursue criminal charges  
27 against an officer.

28 (3) CIVIL SUITS BROUGHT BY LAW ENFORCEMENT OFFICERS OR  
29 CORRECTIONAL OFFICERS.--

30 (a) Every law enforcement officer or correctional  
31 officer shall have the right to bring civil suit against any

1 person, group of persons, or organization or corporation, or  
2 the head of such organization or corporation, for damages,  
3 either pecuniary or otherwise, suffered during the performance  
4 of the officer's official duties or for abridgment of the  
5 officer's civil rights arising out of the officer's  
6 performance of official duties. Furthermore, subsequent to a  
7 court's decision that a willful and knowing violation has  
8 occurred, a law enforcement officer or correctional officer  
9 shall have the right to bring a civil suit against an agency  
10 for a willful and knowing violation of the officer's rights  
11 under this part.

12 (b)1. If a civil action is filed against an agency for  
13 a willful and knowing violation of this part and the court  
14 determines that a willful and knowing violation did occur, the  
15 court shall assess and award, against the agency responsible,  
16 the reasonable costs of enforcement, including reasonable  
17 attorney's fees.

18 2. Whenever an agency appeals a court's decision that  
19 a willful and knowing violation of this part has occurred, and  
20 such decision is affirmed, the court shall assess a reasonable  
21 attorney's fee against the agency for such appellate action.

22 Section 3. Subsection (2) of section 112.533, Florida  
23 Statutes, 1996 Supplement, is amended, subsection (3) is  
24 renumbered as subsection (4), and a new subsection (3) is  
25 added to said section, to read:

26 112.533 Receipt and processing of complaints.--

27 (2)(a) A complaint filed against a law enforcement  
28 officer or correctional officer with a law enforcement agency  
29 or correctional agency and all information obtained pursuant  
30 to the investigation by the agency of such complaint shall be  
31 confidential and exempt from the provisions of s. 119.07(1)

1 until the investigation ceases to be active, or until the  
2 agency head or the agency head's designee provides written  
3 notice to the officer who is the subject of the complaint,  
4 either personally or by mail, that the agency has either:

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

7 2. Concluded the investigation with a finding to  
8 proceed with disciplinary action or to file charges.

9  
10 Notwithstanding the foregoing provisions, the officer who is  
11 the subject of the complaint may review the complaint and all  
12 written or otherwise recorded statements made by or on behalf  
13 of the complainant and witnesses immediately prior to the  
14 beginning of the investigative interview. If a witness to a  
15 complaint is incarcerated in a correctional facility and may  
16 be under the supervision of, or have contact with, the officer  
17 under investigation, only the names and written or otherwise  
18 recorded statements of the complainant and nonincarcerated  
19 witnesses may be reviewed by the officer under investigation  
20 immediately prior to the beginning of the investigative  
21 interview.

22 (b) This subsection does not apply to any public  
23 record which is exempt from public disclosure pursuant to s.  
24 119.07(3). For the purposes of this subsection, an  
25 investigation shall be considered active as long as it is  
26 continuing with a reasonable, good faith anticipation that an  
27 administrative finding will be made in the foreseeable future.  
28 An investigation is ~~shall be~~ presumed to be inactive if no  
29 finding is made within 45 days after the complaint is filed.

30 (c) Notwithstanding other provisions of this section,  
31 the complaint and information shall be available to law

1 enforcement agencies, correctional agencies, and state  
2 attorneys in the conduct of a lawful criminal investigation.

3 (3) An officer has the right to review his or her  
4 personnel file at reasonable times under the supervision of  
5 the designated records custodian. The officer may attach a  
6 concise statement in response to any item included in the file  
7 and shall be sent a copy of any derogatory material that is  
8 placed in the file. Furthermore, information pertaining to  
9 unfounded or unsubstantiated anonymous complaints shall not be  
10 put in an officer's personnel file or any complaint profile  
11 mechanism.

12 Section 4. Section 112.534, Florida Statutes, is  
13 amended to read:

14 112.534 Failure to comply.--If any law enforcement  
15 agency or correctional agency fails to comply with the  
16 requirements of this part, a law enforcement officer or  
17 correctional officer employed by or appointed to such agency  
18 who is adversely affected ~~personally injured~~ by such failure  
19 to comply may apply directly to the circuit court of the  
20 county wherein such agency is headquartered and permanently  
21 resides for an injunction to restrain and enjoin such  
22 violation of the provisions of this part and to compel the  
23 performance of the duties imposed by this part and for a  
24 declaration as to whether the officer's rights under this part  
25 have been violated in a willful and knowing manner. An action  
26 brought under this section shall be handled expeditiously by  
27 the court so as to protect the rights of the officer bringing  
28 such action. Furthermore, a willful and knowing violation of  
29 this part shall constitute the offense of "misuse of official  
30 position" for purposes of consideration by the Criminal  
31 Justice Standards and Training Commission; such conduct shall

1 be reported by the violator's agency to the commission; and  
2 the commission shall provide an appropriate penalty within the  
3 commission's disciplinary guidelines.

4 Section 5. This act shall take effect upon becoming a  
5 law.

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8 LEGISLATIVE SUMMARY

9  
10 Revises the provisions of part VI of ch. 112, F.S.,  
relating to law enforcement and correctional officers to:

11 1. Redefine the terms "law enforcement officer" and  
"correctional officer" to include part-time officers.

12 2. Define the term "willful and knowing" to mean a  
13 violation of the part under those circumstances in which  
14 a court determines that an officer's rights under the  
part were violated, the interrogating officer knew or  
should have known the conduct violated the part, and the  
violation was substantive in nature.

15 3. Provide that the officer in charge of the  
investigation under the part and the interrogating  
officer must be actively certified officers.

16 4. Provide that every law enforcement officer or  
17 correctional officer shall have the right to bring a  
civil action against an agency for a willful and knowing  
violation of the officer's rights under the part.

18 5. Provide that an officer has the right to review  
19 his or her personnel file at reasonable times under the  
supervision of a designated records custodian and the  
20 officer may attach a concise statement in response to any  
item included in the file.

21 6. Revise language with respect to failure to  
comply with the part.

22 (See bill for details.)  
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