

By the Committee on Criminal Justice and Senators Campbell, Gutman, Dyer, Klein, Grant, Forman, Kurth and Rossin

307-1844-98

1 A bill to be entitled
2 An act relating to law enforcement and
3 correctional officers; amending s. 112.532,
4 F.S.; providing that nothing in the section
5 shall limit the right of a law enforcement or
6 correctional agency to discipline or pursue
7 criminal charges against an officer; amending
8 s. 122.533, F.S.; revising provisions with
9 respect to the receipt and processing of
10 complaints to provide for certain recorded
11 statements; amending s. 122.534, F.S.;
12 providing a penalty for failure to comply with
13 part VI of chapter 112, F.S.; providing
14 definitions; providing an effective date.

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

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18 Section 1. Paragraph (j) is added to subsection (1) of
19 section 112.532, Florida Statutes, to read:

20 112.532 Law enforcement officers' and correctional
21 officers' rights.--All law enforcement officers and
22 correctional officers employed by or appointed to a law
23 enforcement agency or a correctional agency shall have the
24 following rights and privileges:

25 (1) RIGHTS OF LAW ENFORCEMENT OFFICERS AND
26 CORRECTIONAL OFFICERS WHILE UNDER INVESTIGATION.--Whenever a
27 law enforcement officer or correctional officer is under
28 investigation and subject to interrogation by members of his
29 or her agency for any reason which could lead to disciplinary
30 action, demotion, or dismissal, such interrogation shall be
31 conducted under the following conditions:

1 (j) Notwithstanding the rights and privileges provided
2 by this section, nothing in this section shall limit the right
3 of an agency to discipline or to pursue criminal charges
4 against an officer.

5 Section 2. Paragraph (a) of subsection (2) of section
6 112.533, Florida Statutes, is amended to read:

7 112.533 Receipt and processing of complaints.--

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

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

19 2. Concluded the investigation with a finding to
20 proceed with disciplinary action or to file charges.

21
22 Notwithstanding the foregoing provisions, the officer who is
23 the subject of the complaint that could lead to suspension,
24 demotion, or dismissal may review, upon the written request of
25 the officer, the complaint and all written or otherwise
26 recorded statements made by or on behalf of the complainant
27 and witnesses immediately prior to the beginning of the
28 investigative interview. If a witness to a complaint is
29 incarcerated in a correctional facility and may be under the
30 supervision of, or have contact with, the officer under
31 investigation, only the names and written or otherwise

1 recorded statements of the complainant and nonincarcerated
2 witnesses may be reviewed by the officer under investigation
3 immediately prior to the beginning of the investigative
4 interview.

5 Section 3. Section 112.534, Florida Statutes, is
6 amended to read:

7 112.534 Failure to comply.--

8 (1) If any law enforcement agency or correctional
9 agency fails to comply with the requirements of this part, a
10 law enforcement officer or correctional officer employed by or
11 appointed to such agency who is personally injured by such
12 failure to comply may apply directly to the circuit court of
13 the county wherein such agency is headquartered and
14 permanently resides for an injunction to restrain and enjoin
15 such violation of the provisions of this part and to compel
16 the performance of the duties imposed by this part.

17 (2)(a) If, during the course of an interrogation
18 governed by this part, the interrogator willfully and
19 knowingly refuses, with corrupt intent, to comply with the
20 requirements of this part, that person shall, upon conviction,
21 be guilty of a misdemeanor of the first degree, punishable as
22 provided for in s. 775.082 or s. 775.083.

23 (b) For the purposes of this subsection, the term:

24 1. "Willfully and knowingly refuses" means
25 circumstances where either the officer being interrogated or
26 his or her representative objects to a specific violation of
27 this part and the interrogator continues the violation after
28 such objection is made.

29 2. "Corrupt intent" means done with knowledge that the
30 act is wrongful and with improper motives.

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

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4 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
5 COMMITTEE SUBSTITUTE FOR
6 Senate Bill 346

- 7 . Deletes the inclusion of part time law enforcement and
8 correctional officers under the protection of the rights
9 and privileges of Part VI of Chapter 112, F.S.
10 . Changes the definition of "willful and knowing" as
11 applied to a violation of any right of an officer.
12 . Deletes the presumption that a willful and knowing
13 violation of the rights of an officer was not an act in
14 good faith nor with the use of due care by the violator.
15 . Deletes the requirement that an officer in charge of an
16 investigation and the interrogating officer must be
17 actively certified officers.
18 . Deletes the proposed provisions relating to civil suits
19 brought by officers subsequent to a court finding that a
20 willful and knowing violation has occurred.
21 . Deletes the right of an officer to review his or her
22 personnel file at reasonable times under the supervision
23 of a custodian.
24 . Deletes the right of an officer to attach a statement in
25 response to items in the personnel file.
26 . Deletes the requirement that an officer must be sent a
27 copy of derogatory material placed in an officer's
28 personnel file.
29 . Deletes the prohibition against placing information
30 pertaining to unfounded or unsubstantiated anonymous
31 complaints in an officer's personnel file.
32 . Deletes the requirement that a court declare in an
33 expeditious manner whether an officer's rights were
34 willfully and knowingly violated.
35 . Deletes language that would allow the Criminal Justice
36 Standards and Training Commission to consider instances
37 where an officer commits a willful and knowing violation
38 of the "Officer's Bill of Rights," which would have
39 consequences decided by the Commission.
40 . Limits an officer's right to review a complaint to those
41 instances where the complaint could lead to suspension,
42 demotion, or dismissal, and requires the officer to
43 request a review in writing.