

STORAGE NAME: h3949.go
DATE: March 25, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3949

RELATING TO: Law Enforcement and Correctional Officers

SPONSOR(S): Representative Healey and others

COMPANION BILL(S): HB 3143(c), CS/SB 346(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill provides that full-time law enforcement and correctional officers may review any written, or otherwise recorded statements made by, or on behalf of, complainants and witnesses in certain circumstances.

The bill affirms that regardless of officers' rights and privileges enumerated in Part VI of ch.112, F.S., agencies are not limited with respect to the right 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. Also, applicable terms are defined.

This bill has no apparent fiscal impact on state or local governments.

STORAGE NAME: h3949.go

DATE: March 25, 1998

PAGE 2

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Part VI of Chapter 112, F.S., provides certain rights and privileges to full-time law enforcement and correctional officers. 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.

"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 Chapter 112, F.S., include the provisions 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 circumstances when the reading one's "Miranda" rights is appropriate, when representation by counsel is appropriate, and when any interrogation session must be recorded. There is, however, no specific requirement that the officer being interrogated receive a copy of the tape recording. An 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 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.

B. EFFECT OF PROPOSED CHANGES:

This bill specifies that the rights and privileges of officers, as provided in s. 112.532, F.S., do not limit the right of an agency to discipline or pursue criminal charges against a law enforcement officer or a correctional officer.

The bill provides authority for full-time law enforcement and correctional officers to review any written, or otherwise recorded, statements made by complainants, or witnesses, or by someone on their behalf, against such officers. In certain circumstances involving incarcerated witnesses, in addition to written statements, *other recorded statements* would be available for review by the officer under investigation.

Criminal penalties are provided for an interrogator of an officer who, during the course of an interrogation governed by Part VI of Chapter 112, F.S., willfully and knowingly refuses, with corrupt intent, to comply with the requirements of this Part. Such willful and knowing refusal to comply would be a first-degree misdemeanor, which is punishable, pursuant to s. 775, F.S., 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.

This bill would take effect upon becoming law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

There may be some additional effort required on the part of agencies due to the expanded requirement concerning statements of complainants and witnesses, but the impact will be mitigated somewhat, since agencies are often currently complying with these provisions.

- (3) any entitlement to a government service or benefit?

Not to a material degree.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

- (2) what is the cost of such responsibility at the new level/agency?

N/A.

- (3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A.

- (2) Who makes the decisions?

N/A.

- (3) Are private alternatives permitted?

N/A.

(4) Are families required to participate in a program?

N/A.

(5) Are families penalized for not participating in a program?

N/A.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. STATUTE(S) AFFECTED:

This bill amends ss. 122.532, 122.533, and 112.534, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 - Amends s. 112.532, F.S., providing that officers' rights and privileges shall not limit an agency's right to discipline or pursue criminal charges against an officer.

Section 2 - Amends s. 112.533, F.S., providing that officers subject to a complaint may review the complaint and all statements made by the complainant, witnesses, or someone on their behalf, regardless of how the complaint or statements may be recorded.

Section 3 - Amends s.112.534, F.S., providing: 1) criminal penalties for an interrogator who during the course of an interrogation governed by this part, willfully and knowingly, with corrupt intent, refuses to comply with the provisions of Part VI of ch.112, F.S., and 2) applicable definitions.

Section 4 - Provides an effective date of upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds, or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not require counties or municipalities to spend funds, or to take an action requiring the expenditure of funds.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not require counties or municipalities to spend funds, or to take an action requiring the expenditure of funds.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Legislative Research Director:

Russell J. Cyphers, Jr.

Jimmy O. Helms