

STORAGE NAME: h0157.go

DATE: March 10, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 157

RELATING TO: Law Enforcement/Correctional Officers

SPONSOR(S): Representative Posey

COMPANION BILL(S): SB 666 (similar)

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

- (1) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 9 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 157 amends provisions set forth in ss. 112.532, 112.533, F.S. (1998 Supp.), and s. 112.534, F.S.

Section 112.532, F.S. (1998 Supp.), is amended to provide an exception to the requirement that a law enforcement officer or correctional officer must be informed of the name of the complainant prior to any interrogation, where (1) criminal misconduct is alleged on the part of the officer, (2) the complainant declines to be named, and (3) the agency head is acting as the complainant. It also provides that nothing in this section shall limit the right of an agency to discipline or pursue criminal charges against an officer.

Section 112.533, F.S. (1998 Supp.), which allows law enforcement officers and correctional officers to review all written statements made pertaining to any complaint against the officer, is amended to further allow for the review of any *recorded* statements made by the complainant *or on behalf of the* complainant and witnesses, immediately prior to any investigative interview. Any such review of written or recorded statements is limited to complaints *that could lead to suspension, demotion, or dismissal*, and the officer must make a *written* request for these written or recorded statements. The bill requires that all statements of the complainant and the officer subject to a complaint be recorded and under oath. Also, this section specifically authorizes the agency head to act in the capacity of the complainant where: (1) criminal conduct is alleged on the part of the officer, and (2) the complainant declines to be named.

Section 112.534, F.S., is amended to provide a first degree misdemeanor penalty if an interrogator *wilfully and knowingly refuses, with corrupt intent, to comply with these requirements* pertaining to the interrogation of officers.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, section 112.532, F.S. (1998 Supp.), 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, 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.

Section 112.533, F.S. (1998 Supp.), 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 must remain confidential until the agency concludes the investigation, and decides whether or not to file charges.

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.

Current law requires that the officer under investigation be informed of the nature of the investigation and the name of all complainants. There is no exception for complainants who wish to remain anonymous. The officer under investigation is entitled to review the complaint and all written statements made by the complainant and witnesses immediately prior to the hearing. There is no requirement that the officer be permitted to listen to *recorded* statements-- only written statements are to be made available for review. Currently, there is no requirement for the officer under investigation to provide a written request to review these documents. A verbal request is sufficient. Currently, there is no requirement that the complainant's statement be recorded, although this is frequently done. In some cases, a sworn affidavit is taken in lieu of a taped statement.

B. EFFECT OF PROPOSED CHANGES:

HB 157 amends the Florida Statutes pertaining to the procedures used in investigating complaints filed against law enforcement and correctional officers. Section 112.532, F.S. (1998 Supp.), is amended to provide an exception to the requirement that a law enforcement officer or correctional officer must be informed of the name of the complainant prior to any interrogation, where (1) criminal misconduct is alleged on the part of the officer, (2) the complainant declines to be named, and (3) the agency head is acting as the complainant. Allowing complainants to decline to be named when alleging criminal misconduct would encourage individuals to come forward and lessen fear of retaliation.

The bill also specifically provides that nothing in this section shall be construed to limit the right of an agency to discipline or pursue criminal charges against an officer.

Section 112.533, F.S. (1998 Supp.), which allows law enforcement officers and correctional officers to review all written statements made pertaining to any complaint against the officer, is amended to further allow for the review of any *recorded* statements made by the complainant *or on behalf of the* complainant and witnesses, immediately prior to any investigative interview. Any such review of written or recorded statements is limited to complaints *that could lead to suspension, demotion, or dismissal*, and the officer must make a *written* request for these written or recorded statements. The bill requires that all statements of the complainant and the officer subject to a complaint be recorded and under oath. Also, this section specifically authorizes the agency head to act in the capacity of the complainant where: (1) criminal conduct is alleged on the part of the officer, and (2) the complainant declines to be named.

Section 112.534, F.S., is amended to provide a first degree misdemeanor penalty if an interrogator *wilfully and knowingly refuses, with corrupt intent, to comply with these requirements* pertaining to the interrogation of officers.

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?

N/A

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

N/A

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

N/A

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

This bill does not purport to eliminate or reduce an agency or a program.

(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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

5. Family Empowerment:

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

This bill does not purport 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?

N/A

- 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:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 112.532, 112.533, F.S. (1998 Supp.), and s. 112.534, F.S.

E. SECTION-BY-SECTION ANALYSIS:

None.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

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 expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenue.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

This bill is similar to HB 3949 (1998), which was reported unanimously favorable, as amended, by the Committee on Governmental Operations on April 7, 1998, and passed the House 115-0 on April 21, 1998, but died in the Senate Committee on Criminal Justice.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 3, 1999, the Committee on Law Enforcement & Crime Prevention adopted three amendments, which are traveling with the bill.

Amendment 1: Removes the new language from the bill on page 2, lines 11 through 15. This would remove the specifications required for the agency head to act on behalf of the complainant. This amendment would keep s. 112.532 (d), F.S. (1998 Supp.), intact with no changes.

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Amendment 2: Alters the language in section 2 of the bill regarding the receipt and processing of complaints. It specifies that if a complaint as initially alleged could lead to suspension, demotion, or dismissal, the officer who is the subject of the complaint may review the written or recorded statements upon written request. It also eliminates references to situations where the originating complainant declines to be named, and the agency head acts in the capacity of the complainant (which keeps this section consistent with the removal of similar new language by amendment 1).

Amendment 3: Removes the new language from the bill on page 4, lines 8 through 21, regarding criminal infractions of this section by an interrogator. It provides a non-criminal infraction for any person who intentionally violates any of the provisions of this part, and allows an award of attorney fees to the prevailing party.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

Prepared by:

Staff Director:

Kurt E. Ahrendt

Kurt E. Ahrendt

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

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