

By Senator Gutman

34-422A-99

See HB

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 an exception to the requirement
5 of informing the officer under investigation of
6 the name of all complainants; providing that
7 nothing in the section shall limit the right of
8 a law enforcement or correctional agency to
9 discipline or pursue criminal charges against
10 an officer; amending s. 112.533, F.S.; revising
11 provisions with respect to the receipt and
12 processing of complaints to provide for certain
13 recorded statements; providing for the agency
14 head to act in the capacity of complainant
15 under certain circumstances; amending s.
16 112.534, F.S.; providing a penalty for failure
17 to comply with part VI of chapter 112, F.S.;
18 providing definitions; providing an effective
19 date.

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

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23 Section 1. Paragraph (d) of subsection (1) of section
24 112.532, Florida Statutes, 1998 Supplement, is amended and
25 paragraph (j) is added to that subsection to read:

26 112.532 Law enforcement officers' and correctional
27 officers' rights.--All law enforcement officers and
28 correctional officers employed by or appointed to a law
29 enforcement agency or a correctional agency shall have the
30 following rights and privileges:

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

8 (d) The law enforcement officer or correctional
9 officer under investigation shall be informed of the nature of
10 the investigation prior to any interrogation, and he or she
11 shall be informed of the name of all complainants, unless, as
12 provided in s. 112.533(2)(a), the originating complainant
13 alleges criminal misconduct on behalf of the officer and
14 declines to be named and the agency head is acting as the
15 complainant.

16 (j) Notwithstanding the rights and privileges provided
17 by this section, nothing in this section shall limit the right
18 of an agency to discipline or to pursue criminal charges
19 against an officer.

20 Section 2. Paragraph (a) of subsection (2) of section
21 112.533, Florida Statutes, 1998 Supplement, is amended to
22 read:

23 112.533 Receipt and processing of complaints.--

24 (2)(a) A complaint filed against a law enforcement
25 officer or correctional officer with a law enforcement agency
26 or correctional agency and all information obtained pursuant
27 to the investigation by the agency of such complaint shall be
28 confidential and exempt from the provisions of s. 119.07(1)
29 until the investigation ceases to be active, or until the
30 agency head or the agency head's designee provides written
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1 notice to the officer who is the subject of the complaint,
2 either personally or by mail, that the agency has either:

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

5 2. Concluded the investigation with a finding to
6 proceed with disciplinary action or to file charges.

7
8 Notwithstanding the foregoing provisions, the officer who is
9 the subject of the complaint that could lead to suspension,
10 demotion, or dismissal may review, upon the written request of
11 the officer, the complaint and all written or otherwise
12 recorded statements made by or on behalf of the complainant
13 and witnesses immediately prior to the beginning of the
14 investigative interview. If a witness to a complaint is
15 incarcerated in a correctional facility and may be under the
16 supervision of, or have contact with, the officer under
17 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. All statements of the complainant and the officer
22 who is the subject of the complaint shall be recorded and
23 taken under oath. However, if an originating complainant
24 alleges criminal misconduct on behalf of an officer and
25 declines to be named, the complaint may be filed by the agency
26 head, who may act in the capacity of complainant.

27 Section 3. Section 112.534, Florida Statutes, is
28 amended to read:

29 112.534 Failure to comply.--

30 (1) If any law enforcement agency or correctional
31 agency fails to comply with the requirements of this part, a

1 law enforcement officer or correctional officer employed by or
2 appointed to such agency who is personally injured by such
3 failure to comply may apply directly to the circuit court of
4 the county wherein such agency is headquartered and
5 permanently resides for an injunction to restrain and enjoin
6 such violation of the provisions of this part and to compel
7 the performance of the duties imposed by this part.

8 (2)(a) If, during the course of an interrogation
9 governed by this part, the interrogator willfully and
10 knowingly refuses, with corrupt intent, to comply with the
11 requirements of this part, that person shall, upon conviction,
12 be guilty of a misdemeanor of the first degree, punishable as
13 provided for in s. 775.082 or s. 775.083.

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

15 1. "Willfully and knowingly refuses" means
16 circumstances where either the officer being interrogated or
17 his or her representative objects to a specific violation of
18 this part and the interrogator continues the violation after
19 such objection is made.

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

22 Section 4. This act shall take effect upon becoming a
23 law.
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LEGISLATIVE SUMMARY

Revises provisions of law under Part VI of chapter 112, F.S., relating to law enforcement and correctional officers, to:

1. Provide an exception to the requirement of informing the officer under investigation of the name of all complainants when the originating complainant alleges criminal misconduct on behalf of the officer and declines to be named and the agency head is acting as the complainant.

2. Provide that nothing in s. 112.532, F.S., relating to law enforcement officers' and correctional officers' rights shall be construed to limit the right of a law enforcement or correctional agency to discipline or pursue criminal charges against the officer.

3. Revise provisions with respect to the receipt and processing of complaints to provide for described recorded statements and to provide for the agency head to act in the capacity of complainant under described circumstances.

4. Provide a first-degree misdemeanor penalty for willful and knowing refusal, with corrupt intent, to comply with the requirements of Part VI of chapter 112, F.S.

(See bill for details.)