

By the Committee on Criminal Justice; and Senator Diaz de la Portilla

307-2186-03

1 A bill to be entitled
2 An act relating to law enforcement officers and
3 correctional officers; amending s. 112.532,
4 F.S.; revising provisions relating to
5 disciplinary actions against officers;
6 providing grounds for civil actions by
7 officers; providing for officers to obtain
8 investigative reports; revising guidelines for
9 questioning officers who are being
10 investigated; amending s. 112.533, F.S.;
11 providing for legal counsel or a representative
12 of the officer's choice to review a complaint
13 filed against the officer and all statements
14 made by the complainant and witnesses;
15 providing an effective date.

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

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19 Section 1. Subsections (1), (3), and (4) of section
20 112.532, Florida Statutes, are amended to read:

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

26 (1) RIGHTS OF LAW ENFORCEMENT OFFICERS AND
27 CORRECTIONAL OFFICERS WHILE UNDER INVESTIGATION.--Whenever a
28 law enforcement officer or correctional officer is under
29 investigation and subject to interrogation by members of his
30 or her agency for any reason which could lead to disciplinary
31

1 action, demotion, or dismissal, such interrogation shall be
2 conducted under the following conditions:

3 (a) The interrogation shall be conducted at a
4 reasonable hour, preferably at a time when the law enforcement
5 officer or correctional officer is on duty, unless the
6 seriousness of the investigation is of such a degree that
7 immediate action is required.

8 (b) The interrogation shall take place either at the
9 office of the command of the investigating officer or at the
10 office of the local precinct, police unit, or correctional
11 unit in which the incident allegedly occurred, as designated
12 by the investigating officer or agency.

13 (c) The law enforcement officer or correctional
14 officer under investigation shall be informed of the rank,
15 name, and command of the officer in charge of the
16 investigation, the interrogating officer, and all persons
17 present during the interrogation. All questions directed to
18 the officer under interrogation shall be asked by or ~~and~~
19 through one interrogator ~~at any one time~~.

20 (d) The law enforcement officer or correctional
21 officer under investigation shall be informed of the nature of
22 the investigation prior to any interrogation, and he or she
23 shall be informed of the name of all complainants.

24 (e) Interrogating sessions shall be for reasonable
25 periods and shall be timed to allow for such personal
26 necessities and rest periods as are reasonably necessary.

27 (f) The law enforcement officer or correctional
28 officer under interrogation shall not be subjected to
29 offensive language or be threatened with transfer, dismissal,
30 or disciplinary action. No promise or reward shall be made as
31 an inducement to answer any questions.

1 (g) The formal interrogation of a law enforcement
2 officer or correctional officer, including all recess periods,
3 shall be recorded on audio tape, or otherwise preserved in
4 such a manner as to allow a transcript to be prepared, and
5 there shall be no unrecorded questions or statements. Upon the
6 request of the interrogated officer, a copy of any such
7 recording of the interrogation session must be made available
8 to the interrogated officer no later than 72 hours, excluding
9 holidays and weekends, following said interrogation.

10 (h) If the law enforcement officer or correctional
11 officer under interrogation is under arrest, or is likely to
12 be placed under arrest as a result of the interrogation, he or
13 she shall be completely informed of all his or her rights
14 prior to the commencement of the interrogation.

15 (i) At the request of any law enforcement officer or
16 correctional officer under investigation, he or she shall have
17 the right to be represented by counsel or any other
18 representative of his or her choice, who shall be present at
19 all times during such interrogation whenever the interrogation
20 relates to the officer's continued fitness for law enforcement
21 or correctional service.

22 (j) Notwithstanding the rights and privileges provided
23 by this part, this part does not limit the right of an agency
24 to discipline or to pursue criminal charges against an
25 officer.

26 (3) CIVIL SUITS BROUGHT BY LAW ENFORCEMENT OFFICERS OR
27 CORRECTIONAL OFFICERS.--Every law enforcement officer or
28 correctional officer shall have the right to bring civil suit
29 against any person, group of persons, or organization or
30 corporation, or the head of such organization or corporation,
31 for damages, either pecuniary or otherwise, suffered during

1 the performance of the officer's official duties,~~or~~ for
2 abridgment of the officer's civil rights arising out of the
3 officer's performance of official duties, or for filing a
4 complaint against the officer which the person knew was false
5 when it was filed.

6 (4)(a) NOTICE OF DISCIPLINARY ACTION.--No dismissal,
7 demotion, transfer, reassignment, or other personnel action
8 which might result in loss of pay or benefits or which might
9 otherwise be considered a punitive measure shall be taken
10 against any law enforcement officer or correctional officer
11 unless such law enforcement officer or correctional officer is
12 notified of the action and the reason or reasons therefor
13 prior to the effective date of such action.

14 (b) Notwithstanding s. 112.533(2), a law enforcement
15 officer or correctional officer who is subject to a proposed
16 disciplinary action shall, upon request, be given a copy of
17 the complete investigative report and supporting documents and
18 given the opportunity to address the findings of the report
19 with the employing agency before the imposition of any
20 disciplinary action.

21 Section 2. Paragraph (a) of subsection (2) and
22 subsection (4) of section 112.533, Florida Statutes, are
23 amended to read:

24 112.533 Receipt and processing of complaints.--

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

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, along with legal counsel or any
10 other representative of his or her choice, may review the
11 complaint and all statements regardless of form made by the
12 complainant and witnesses immediately prior to the beginning
13 of the investigative interview. If a witness to a complaint is
14 incarcerated in a correctional facility and may be under the
15 supervision of, or have contact with, the officer under
16 investigation, only the names and written statements of the
17 complainant and nonincarcerated witnesses may be reviewed by
18 the officer under investigation immediately prior to the
19 beginning of the investigative interview.

20 (4) Any person who is a participant in an internal
21 investigation, including the complainant, the subject of the
22 investigation and the subject's legal counsel or a
23 representative of his or her choice, the investigator
24 conducting the investigation, and any witnesses in the
25 investigation, who willfully discloses any information
26 obtained pursuant to the agency's investigation, including,
27 but not limited to, the identity of the officer under
28 investigation, the nature of the questions asked, information
29 revealed, or documents furnished in connection with a
30 confidential internal investigation of an agency, before such
31 complaint, document, action, or proceeding becomes a public

1 record as provided in this section commits a misdemeanor of
2 the first degree, punishable as provided in s. 775.082 or s.
3 775.083. However, this subsection does not limit a law
4 enforcement or correctional officer's ability to gain access
5 to information under paragraph (2)(a). Additionally, a
6 sheriff, police chief, or other head of a law enforcement
7 agency, or his or her designee, is not precluded by this
8 section from acknowledging the existence of a complaint and
9 the fact that an investigation is underway.

10 Section 3. This act shall take effect July 1, 2003.

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12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 Senate Bill 1856

- 15 - The CS amends the bill to provide for legal counsel or a
16 representative of the officer's choosing to review the
17 complaint against the officer under investigation, and
any witness statements, prior to the investigative
interview of the officer.
- 18 - The bill is further amended to include the officer's
19 legal counsel or other representative among those who may
20 be prosecuted for a misdemeanor if he or she willfully
discloses any information obtained pursuant to the
investigation before it becomes a public record.