

By the Committees on Judiciary; Criminal Justice; and Senators  
Diaz de la Portilla and Argenziano

308-2381-03

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; providing for the production of  
11          an investigative report and supporting  
12          documents in a disciplinary case against a law  
13          enforcement or correctional officer to that  
14          officer prior to the imposition of certain  
15          disciplinary actions; providing for such  
16          records to remain confidential pursuant to the  
17          current public-records exemption; providing  
18          that such provision is not to be construed to  
19          provide a law enforcement or correctional  
20          officer with a property interest in a position  
21          of employment; amending s. 112.533, F.S.;  
22          providing for legal counsel or a representative  
23          of the officer's choice to review a complaint  
24          filed against the officer and all statements  
25          made by the complainant and witnesses;  
26          providing an effective date.

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

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30           Section 1. Subsections (1), (3), and (4) of section  
31 112.532, Florida Statutes, are amended to read:

1           112.532 Law enforcement officers' and correctional  
2 officers' rights.--All law enforcement officers and  
3 correctional officers employed by or appointed to a law  
4 enforcement agency or a correctional agency shall have the  
5 following rights and privileges:

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

13           (a) The interrogation shall be conducted at a  
14 reasonable hour, preferably at a time when the law enforcement  
15 officer or correctional officer is on duty, unless the  
16 seriousness of the investigation is of such a degree that  
17 immediate action is required.

18           (b) The interrogation shall take place either at the  
19 office of the command of the investigating officer or at the  
20 office of the local precinct, police unit, or correctional  
21 unit in which the incident allegedly occurred, as designated  
22 by the investigating officer or agency.

23           (c) The law enforcement officer or correctional  
24 officer under investigation shall be informed of the rank,  
25 name, and command of the officer in charge of the  
26 investigation, the interrogating officer, and all persons  
27 present during the interrogation. All questions directed to  
28 the officer under interrogation shall be asked by or ~~and~~  
29 through one interrogator during any one investigative  
30 interrogation, unless specifically waived by the officer under  
31 investigation ~~at any one time.~~

1           (d) The law enforcement officer or correctional  
2 officer under investigation shall be informed of the nature of  
3 the investigation prior to any interrogation, and he or she  
4 shall be informed of the name of all complainants.

5           (e) Interrogating sessions shall be for reasonable  
6 periods and shall be timed to allow for such personal  
7 necessities and rest periods as are reasonably necessary.

8           (f) The law enforcement officer or correctional  
9 officer under interrogation shall not be subjected to  
10 offensive language or be threatened with transfer, dismissal,  
11 or disciplinary action. No promise or reward shall be made as  
12 an inducement to answer any questions.

13           (g) The formal interrogation of a law enforcement  
14 officer or correctional officer, including all recess periods,  
15 shall be recorded on audio tape, or otherwise preserved in  
16 such a manner as to allow a transcript to be prepared, and  
17 there shall be no unrecorded questions or statements. Upon the  
18 request of the interrogated officer, a copy of any such  
19 recording of the interrogation session must be made available  
20 to the interrogated officer no later than 72 hours, excluding  
21 holidays and weekends, following said interrogation.

22           (h) If the law enforcement officer or correctional  
23 officer under interrogation is under arrest, or is likely to  
24 be placed under arrest as a result of the interrogation, he or  
25 she shall be completely informed of all his or her rights  
26 prior to the commencement of the interrogation.

27           (i) At the request of any law enforcement officer or  
28 correctional officer under investigation, he or she shall have  
29 the right to be represented by counsel or any other  
30 representative of his or her choice, who shall be present at  
31 all times during such interrogation whenever the interrogation

1 relates to the officer's continued fitness for law enforcement  
2 or correctional service.

3 (j) Notwithstanding the rights and privileges provided  
4 by this part, this part does not limit the right of an agency  
5 to discipline or to pursue criminal charges against an  
6 officer.

7 (3) CIVIL SUITS BROUGHT BY LAW ENFORCEMENT OFFICERS OR  
8 CORRECTIONAL OFFICERS.--Every law enforcement officer or  
9 correctional officer shall have the right to bring civil suit  
10 against any person, group of persons, or organization or  
11 corporation, or the head of such organization or corporation,  
12 for damages, either pecuniary or otherwise, suffered during  
13 the performance of the officer's official duties,~~or~~ for  
14 abridgment of the officer's civil rights arising out of the  
15 officer's performance of official duties, or for filing a  
16 complaint against the officer which the person knew was false  
17 when it was filed. This section does not establish a separate  
18 civil action against the officer's employing law enforcement  
19 agency for the investigation and processing of a complaint  
20 filed under this part.

21 (4)(a) NOTICE OF DISCIPLINARY ACTION.--No dismissal,  
22 demotion, transfer, reassignment, or other personnel action  
23 which might result in loss of pay or benefits or which might  
24 otherwise be considered a punitive measure shall be taken  
25 against any law enforcement officer or correctional officer  
26 unless such law enforcement officer or correctional officer is  
27 notified of the action and the reason or reasons therefor  
28 prior to the effective date of such action.

29 (b) Notwithstanding the provisions of s. 112.533(2),  
30 whenever a law enforcement officer or correctional officer is  
31 subject to disciplinary action consisting of suspension with

1 loss of pay, demotion, or dismissal, the officer shall, upon  
2 request, be provided with a complete copy of the investigative  
3 report and supporting documents and with the opportunity to  
4 address the findings in the report with the employing law  
5 enforcement agency prior to the imposition of the disciplinary  
6 action consisting of suspension with loss of pay, demotion, or  
7 dismissal. The contents of the complaint and investigation  
8 shall remain confidential until such time as the employing law  
9 enforcement agency makes a final determination whether or not  
10 to issue a notice of disciplinary action consisting of  
11 suspension with loss of pay, demotion, or dismissal. This  
12 paragraph shall not be construed to provide law enforcement  
13 officers with a property interest or expectancy of continued  
14 employment, employment, or appointment as a law enforcement  
15 officer.

16 Section 2. Paragraph (a) of subsection (2) and  
17 subsection (4) of section 112.533, Florida Statutes, are  
18 amended to read:

19 112.533 Receipt and processing of complaints.--

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

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

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

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4 Notwithstanding the foregoing provisions, the officer who is  
5 the subject of the complaint, along with legal counsel or any  
6 other representative of his or her choice, may review the  
7 complaint and all statements regardless of form made by the  
8 complainant and witnesses immediately prior to the beginning  
9 of the investigative interview. If a witness to a complaint is  
10 incarcerated in a correctional facility and may be under the  
11 supervision of, or have contact with, the officer under  
12 investigation, only the names and written statements of the  
13 complainant and nonincarcerated witnesses may be reviewed by  
14 the officer under investigation immediately prior to the  
15 beginning of the investigative interview.

16           (4) Any person who is a participant in an internal  
17 investigation, including the complainant, the subject of the  
18 investigation and the subject's legal counsel or a  
19 representative of his or her choice, the investigator  
20 conducting the investigation, and any witnesses in the  
21 investigation, who willfully discloses any information  
22 obtained pursuant to the agency's investigation, including,  
23 but not limited to, the identity of the officer under  
24 investigation, the nature of the questions asked, information  
25 revealed, or documents furnished in connection with a  
26 confidential internal investigation of an agency, before such  
27 complaint, document, action, or proceeding becomes a public  
28 record as provided in this section commits a misdemeanor of  
29 the first degree, punishable as provided in s. 775.082 or s.  
30 775.083. However, this subsection does not limit a law  
31 enforcement or correctional officer's ability to gain access

1 to information under paragraph (2)(a). Additionally, a  
2 sheriff, police chief, or other head of a law enforcement  
3 agency, or his or her designee, is not precluded by this  
4 section from acknowledging the existence of a complaint and  
5 the fact that an investigation is underway.

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

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8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
9 COMMITTEE SUBSTITUTE FOR  
10 CS/SB 1856

- 11 - Clarifies questions are to be asked solely by or through  
12 one interrogator unless the officer waives that right.  
13 - States that a separate cause of action is not established  
14 against an officer's employing agency on the basis of a  
15 complaint filed against another officer.  
16 - Expands the provisions about what documents and reports  
17 are to be given to an officer in a pending disciplinary  
18 action.  
19 - Provides for the confidentiality of a complaint and  
20 investigation of an officer pending a disciplinary  
21 action.  
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