

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 723
SPONSOR(S): Thompson
TIED BILLS:

Correctional and Law Enforcement Officer Discipline
IDEN./SIM. BILLS: SB 690

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--|-----------------|-------------------|-----------------|
| 1) <u>Committee on Homeland Security & Public Safety</u> | <u>8 Y, 0 N</u> | <u>Cunningham</u> | <u>Kramer</u> |
| 2) <u>Safety & Security Council</u> | <u></u> | <u>Cunningham</u> | <u>Havlicak</u> |
| 3) <u></u> | <u></u> | <u></u> | <u></u> |
| 4) <u></u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

Section 112.533, F.S., currently requires law enforcement and correctional agencies to establish procedures for the receipt, investigation, and determination of complaints against law enforcement and correctional officers. Although these procedures vary from agency to agency, most agencies generate investigative reports summarizing the agency's findings. This bill requires law enforcement or correctional agency personnel who are investigating a complaint against an officer and who are preparing an investigative report or summary regarding such complaint to:

- Verify pursuant to s. 92.525, F.S., that the contents of the report are true and accurate based upon the officer's information and belief; and
- Include the following statement:

"I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss. 112.532 and 112.533, Florida Statutes"

The bill further specifies that the verifications be completed prior to the determination as to whether to proceed with disciplinary action or to file disciplinary charges.

The bill also requires that all statements provided by a law enforcement officer or correctional officer during the course of a complaint investigation be made under oath. The bill permits prosecution for perjury if a law enforcement officer or correctional officer knowingly gives false statements when under investigation.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - The bill requires law enforcement and correctional agencies to verify that the contents of investigative reports relating to complaints against officers are true and accurate, and to include in the report a statement relating to compliance with the Law Enforcement Officer's Bill of Rights.

B. EFFECT OF PROPOSED CHANGES:

Law Enforcement Officer's Bill of Rights

Law enforcement¹ and correctional officers² have certain statutory rights and privileges while under investigation. Currently, Part VI of Chapter 112, commonly known as the "Law Enforcement Officers' Bill of Rights," grants law enforcement officers and correctional officers specific rights when the officer is under investigation and subject to interrogation by members or his or her agency for any reason which could lead to disciplinary action, demotion or dismissal.

Currently, if an agency fails to comply with the provisions of the Law Enforcement Officers' Bill of Rights, an officer who is personally injured by such failure to comply may apply directly to the circuit court of the county where the agency is headquartered for an injunction to restrain and enjoin the violation and to compel performance of the agency's duties.³ Such officer may also file a civil suit for damages.⁴

Investigative Reports

Section 112.533, F.S., currently requires law enforcement and correctional agencies to establish procedures for the receipt, investigation, and determination of complaints against law enforcement and correctional officers. These procedures vary from agency to agency. However, in most instances when a complaint against an officer is filed, agencies investigate the complaint and generate investigative reports that summarize the agency's findings.

Currently, Florida law provides criminal penalties for making false investigative reports.⁵ However, there is no law specifically requiring that the person preparing an investigative report verify pursuant to s. 92.525, F.S., that the contents of the report are true and accurate based upon the preparer's information and belief.⁶ Nor is there a current statutory requirement that a person preparing an investigative report include any type of statement regarding compliance with the Law Enforcement Officer's Bill of Rights.

¹ The term "law enforcement officer" is defined as follows: "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." s. 112.531(1), F.S.

² The term "correctional officer" is defined as follows: "any person, other than a warden, 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). However, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel." s. 112.531(2), F.S.

³ s. 112.534, F.S.

⁴ s. 112.532(3), F.S.

⁵ See s. 837.06, F.S., (whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his/her official duties is guilty of a second degree misdemeanor); s. 838.022, F.S., (It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another, to falsify, or cause another person to falsify, any official record or official document); s. 944.33, F.S., (If any prison inspector knowingly makes a false report of his/ her findings, he/she shall be guilty of a third degree felony).

⁶ Section 92.525, F.S., provides two methods of document verification (by oath or affirmation or by the signing of a written declaration) and provides that it is a third degree felony to knowingly make a false declaration.

Effect of the Bill

This bill requires law enforcement or correctional agency personnel who are investigating a complaint against an officer and who are preparing an investigative report or summary regarding such complaint to:

- Verify pursuant to s. 92.525, F.S., that the contents of the report are true and accurate based upon the officer's information and belief; and
- Include the following statement in the report or summary:

“I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss. 112.532 and 112.533, Florida Statutes”

The bill further specifies that the verifications be completed prior to the determination as to whether to proceed with disciplinary action or to file disciplinary charges.

The bill also requires that all statements provided by a law enforcement officer or correctional officer during the course of a complaint investigation be made under oath pursuant to s. 92.525, F.S. The bill permits prosecution for perjury if a law enforcement officer or correctional officer knowingly gives false statements when under investigation.

C. SECTION DIRECTORY:

Section 1. Amends s. 112.533, F.S., relating to receipt and processing of complaints.

Section 2. This act takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No comment submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES