

1 A bill to be entitled
 2 An act relating to law enforcement officers and
 3 correctional officers; amending s. 112.532, F.S.;
 4 providing that a law enforcement officer or correctional
 5 officer is entitled to specified rights if the officer is
 6 subject to suspension in a disciplinary proceeding;
 7 providing that a law enforcement officer or correctional
 8 officer is entitled to review witness statements by other
 9 officers and other evidence before the officer under
 10 investigation is interrogated; providing that an
 11 investigation is void if the law enforcement agency or
 12 correctional agency violates the disciplinary procedures
 13 set forth in law; amending s. 112.533, F.S.; authorizing a
 14 law enforcement officer or correctional officer who is
 15 subject to an investigation, and the officer's legal
 16 counsel, to review specified documents and recordings
 17 before the investigative interview; amending s. 112.534,
 18 F.S.; providing remedies to the officer if an agency fails
 19 to comply with disciplinary procedures; providing an
 20 effective date.

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

23
 24 Section 1. Subsections (1), (4), and (6) of section
 25 112.532, Florida Statutes, are amended, and subsection (7) is
 26 added to that section, to read:

27 112.532 Law enforcement officers' and correctional
 28 officers' rights.--All law enforcement officers and correctional

29 officers employed by or appointed to a law enforcement agency or
 30 a correctional agency shall have the following rights and
 31 privileges:

32 (1) RIGHTS OF LAW ENFORCEMENT OFFICERS AND CORRECTIONAL
 33 OFFICERS WHILE UNDER INVESTIGATION.--Whenever a law enforcement
 34 officer or correctional officer is under investigation and
 35 subject to interrogation by members of his or her agency for any
 36 reason that ~~which~~ could lead to disciplinary action, suspension,
 37 demotion, or dismissal, the ~~such~~ interrogation must ~~shall~~ be
 38 conducted under the following conditions:

39 (a) The interrogation shall be conducted at a reasonable
 40 hour, preferably at a time when the law enforcement officer or
 41 correctional officer is on duty, unless the seriousness of the
 42 investigation is of such a degree that immediate action is
 43 required.

44 (b) The interrogation shall take place either at the
 45 office of the command of the investigating officer or at the
 46 office of the local precinct, police unit, or correctional unit
 47 in which the incident allegedly occurred, as designated by the
 48 investigating officer or agency.

49 (c) The law enforcement officer or correctional officer
 50 under investigation shall be informed of the rank, name, and
 51 command of the officer in charge of the investigation, the
 52 interrogating officer, and all persons present during the
 53 interrogation. All questions directed to the officer under
 54 interrogation shall be asked by or through one interrogator
 55 during any one investigative interrogation, unless specifically
 56 waived by the officer under investigation.

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57 (d) The law enforcement officer or correctional officer
58 under investigation must ~~shall~~ be informed of the nature of the
59 investigation before ~~prior to~~ any interrogation begins, and he
60 or she must ~~shall~~ be informed of the names of all complainants.
61 All identifiable witnesses shall be interviewed, whenever
62 possible, prior to the beginning of the investigative interview
63 of the accused officer. The complaint, ~~and~~ all witness
64 statements, including all other existing subject officer
65 statements, and all other evidence, including, but not limited
66 to, incident reports, GPS locator information, and audio or
67 video recordings relating to the incident under investigation,
68 must ~~shall~~ be provided to each ~~the~~ officer who is the subject of
69 the complaint before ~~prior to~~ the beginning of any investigative
70 interview of that officer. If more than one officer is or comes
71 under investigation, the agency shall permit each subject
72 officer to review statements given by all subject officers and
73 to amend or clarify any previous statement given. An officer,
74 after being informed of the right to review witness statements,
75 may voluntarily waive the provisions of this paragraph and
76 provide a voluntary statement at any time.

77 (e) Interrogating sessions shall be for reasonable periods
78 and shall be timed to allow for such personal necessities and
79 rest periods as are reasonably necessary.

80 (f) The law enforcement officer or correctional officer
81 under interrogation may ~~shall~~ not be subjected to offensive
82 language or be threatened with transfer, dismissal, or
83 disciplinary action. A ~~No~~ promise or reward may not ~~shall~~ be
84 made as an inducement to answer any questions.

85 (g) The formal interrogation of a law enforcement officer
 86 or correctional officer, including all recess periods, must
 87 ~~shall~~ be recorded on audio tape, or otherwise preserved in such
 88 a manner as to allow a transcript to be prepared, and there
 89 shall be no unrecorded questions or statements. Upon the request
 90 of the interrogated officer, a copy of any ~~such~~ recording of the
 91 interrogation session must be made available to the interrogated
 92 officer no later than 72 hours, excluding holidays and weekends,
 93 following said interrogation.

94 (h) If the law enforcement officer or correctional officer
 95 under interrogation is under arrest, or is likely to be placed
 96 under arrest as a result of the interrogation, he or she shall
 97 be completely informed of all his or her rights before
 98 commencing ~~prior to the commencement of~~ the interrogation.

99 (i) At the request of any law enforcement officer or
 100 correctional officer under investigation, he or she has ~~shall~~
 101 ~~have~~ the right to be represented by counsel or any other
 102 representative of his or her choice, who shall be present at all
 103 times during the ~~such~~ interrogation whenever the interrogation
 104 relates to the officer's continued fitness for law enforcement
 105 or correctional service.

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

109 (4) (a) NOTICE OF DISCIPLINARY ACTION.--A ~~No~~ dismissal,
 110 demotion, transfer, reassignment, or other personnel action that
 111 ~~which~~ might result in loss of pay or benefits or that ~~which~~
 112 might otherwise be considered a punitive measure may not ~~shall~~

113 be taken against any law enforcement officer or correctional
 114 officer unless the ~~such~~ law enforcement officer or correctional
 115 officer is notified of the action and the reason or reasons for
 116 the action before ~~therefor prior to~~ the effective date of the
 117 ~~such~~ action.

118 (b) Notwithstanding ~~the provisions of~~ s. 112.533(2),
 119 whenever a law enforcement officer or correctional officer is
 120 subject to disciplinary action consisting of suspension with
 121 loss of pay, demotion, or dismissal, the officer or the
 122 officer's representative shall, upon request, be provided with a
 123 complete copy of the investigative file, including the final
 124 investigative report and all evidence, ~~report and supporting~~
 125 ~~documents~~ and with the opportunity to address the findings in
 126 the report with the employing law enforcement agency before
 127 imposing ~~prior to the imposition of the~~ disciplinary action
 128 consisting of suspension with loss of pay, demotion, or
 129 dismissal. The contents of the complaint and investigation shall
 130 remain confidential until such time as the employing law
 131 enforcement agency makes a final determination whether or not to
 132 issue a notice of disciplinary action consisting of suspension
 133 with loss of pay, demotion, or dismissal. This paragraph does
 134 ~~shall not be construed to~~ provide law enforcement officers with
 135 a property interest or expectancy of continued employment,
 136 employment, or appointment as a law enforcement officer.

137 (6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.--

138 (a) Except as provided in this subsection, ~~no~~ disciplinary
 139 action, suspension, demotion, or dismissal may not ~~shall~~ be
 140 undertaken by an agency against a law enforcement officer or

141 | correctional officer for any act, omission, or other allegation
 142 | of misconduct if the investigation of the ~~such~~ allegation is not
 143 | completed within 180 days after the date the agency receives
 144 | notice of the allegation by a person authorized by the agency to
 145 | initiate an investigation of the misconduct. If ~~In the event~~
 146 | ~~that~~ the agency determines that disciplinary action is
 147 | appropriate, it shall complete its investigation and give notice
 148 | in writing to the law enforcement officer or correctional
 149 | officer of its intent to proceed with disciplinary action, along
 150 | with a proposal of the specific action sought, including length
 151 | of suspension, if applicable. ~~Such~~ Notice to the officer must
 152 | ~~shall~~ be provided within 180 days after the date the agency
 153 | received notice of the alleged misconduct, except as follows:

154 | 1. The running of the limitations period may be tolled for
 155 | a period specified in a written waiver of the limitation by the
 156 | law enforcement officer or correctional officer.

157 | 2. The running of the limitations period is ~~shall be~~
 158 | tolled during the time that any criminal investigation or
 159 | prosecution is pending in connection with the act, omission, or
 160 | other allegation of misconduct.

161 | 3. If the investigation involves an officer who is
 162 | incapacitated or otherwise unavailable, the running of the
 163 | limitations period is ~~shall be~~ tolled during the period of
 164 | incapacitation or unavailability.

165 | 4. In a multijurisdictional investigation, the limitations
 166 | period may be extended for a period of time reasonably necessary
 167 | to facilitate the coordination of the agencies involved.

168 | 5. The running of the limitations period may be tolled for

169 emergencies or natural disasters during the time period wherein
 170 the Governor has declared a state of emergency within the
 171 jurisdictional boundaries of the concerned agency.

172 (b) An investigation against a law enforcement officer or
 173 correctional officer may be reopened, notwithstanding the
 174 limitations period for commencing disciplinary action, demotion,
 175 or dismissal, if:

176 1. Significant new evidence has been discovered that is
 177 likely to affect the outcome of the investigation.

178 2. The evidence could not have reasonably been discovered
 179 in the normal course of investigation or the evidence resulted
 180 from the predisciplinary response of the officer.

181
 182 Any disciplinary action resulting from an investigation that is
 183 reopened pursuant to this paragraph must be completed within 90
 184 days after the date the investigation is reopened.

185 (7) DISCIPLINARY REVERSALS.--If a law enforcement agency
 186 or correctional agency violates this section, the disciplinary
 187 action is void and the officer must be reinstated to the
 188 position or rank previously held by the officer, along with
 189 appropriate reimbursement of wages and employment benefits, as
 190 if the discipline had not been imposed.

191 Section 2. Paragraph (a) of subsection (2) of section
 192 112.533, Florida Statutes, is amended to read:

193 112.533 Receipt and processing of complaints.--

194 (2) (a) A complaint filed against a law enforcement officer
 195 or correctional officer with a law enforcement agency or
 196 correctional agency and all information obtained pursuant to the

197 investigation by the agency of the ~~such~~ complaint is ~~shall be~~
 198 confidential and exempt from the provisions of s. 119.07(1)
 199 until the investigation ceases to be active, or until the agency
 200 head or the agency head's designee provides written notice to
 201 the officer who is the subject of the complaint, either
 202 personally or by mail, that the agency has either:

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

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

207
 208 Notwithstanding the foregoing provisions, the officer who is the
 209 subject of the complaint, along with legal counsel or any other
 210 representative of his or her choice, may review the complaint
 211 and all statements regardless of form made by the complainant
 212 and witnesses and all evidence, including, but not limited to,
 213 incident reports, analyses, GPS locator information, and audio
 214 or video recordings relating to the investigation, immediately
 215 before ~~prior to the~~ beginning ~~of~~ the investigative interview.

216 All statements, regardless of form, provided by a law
 217 enforcement officer or correctional officer during the course of
 218 a complaint investigation of that officer shall be made under
 219 oath pursuant to s. 92.525. Knowingly false statements given by
 220 a law enforcement officer or correctional officer under
 221 investigation may subject the law enforcement officer or
 222 correctional officer to prosecution for perjury. If a witness to
 223 a complaint is incarcerated in a correctional facility and may
 224 be under the supervision of, or have contact with, the officer

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225 under investigation, only the names and written statements of
226 the complainant and nonincarcerated witnesses may be reviewed by
227 the officer under investigation immediately prior to the
228 beginning of the investigative interview.

229 Section 3. Subsection (1) of section 112.534, Florida
230 Statutes, is amended to read:

231 112.534 Failure to comply; official misconduct.--

232 (1) If any law enforcement agency or correctional agency
233 fails to comply with the requirements of this part, a law
234 enforcement officer or correctional officer employed by or
235 appointed to such agency who is personally injured by such
236 failure to comply may apply directly to the circuit court of the
237 county wherein such agency is headquartered and permanently
238 resides for an injunction to restrain and enjoin such violation
239 of the provisions of this part and to compel the performance of
240 the duties imposed by this part. Alternatively, the officer may
241 seek declaratory relief pursuant to chapter 86, or seek other
242 extraordinary remedies pursuant to law, in order to ensure
243 compliance with the substantive and procedural rights provided
244 under this part. In fashioning a remedy, the court shall declare
245 that the disciplinary action taken by the agency is void and
246 direct that the officer be reinstated to the position or rank
247 that he or she previously held, along with appropriate
248 reimbursement of wages and employment benefits, as if the
249 discipline had not been imposed.

250 Section 4. This act shall take effect July 1, 2009.