

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 existing evidence before the officer  
 10          under investigation is interrogated; amending s. 112.533,  
 11          F.S.; authorizing a law enforcement officer or  
 12          correctional officer who is subject to an investigation,  
 13          and the officer's legal counsel, to review specified  
 14          documents and recordings before the investigative  
 15          interview; amending s. 112.534, F.S.; providing remedies  
 16          to the officer if an agency fails to comply with specified  
 17          provisions; providing an effective date.

18  
 19   Be It Enacted by the Legislature of the State of Florida:

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 21           Section 1. Subsections (1), (4), and (6) of section  
 22   112.532, Florida Statutes, are amended to read:

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

28           (1) RIGHTS OF LAW ENFORCEMENT OFFICERS AND CORRECTIONAL

CS/HB 1107

2009

29 OFFICERS WHILE UNDER INVESTIGATION.--Whenever a law enforcement  
30 officer or correctional officer is under investigation and  
31 subject to interrogation by members of his or her agency for any  
32 reason that ~~which~~ could lead to disciplinary action, suspension,  
33 demotion, or dismissal, the ~~such~~ interrogation must ~~shall~~ be  
34 conducted under the following conditions:

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

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

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

53 (d) The law enforcement officer or correctional officer  
54 under investigation must ~~shall~~ be informed of the nature of the  
55 investigation before ~~prior to~~ any interrogation begins, and he  
56 or she must ~~shall~~ be informed of the names of all complainants.

57 All identifiable witnesses shall be interviewed, whenever  
58 possible, prior to the beginning of the investigative interview  
59 of the accused officer. The complaint, ~~and~~ all witness  
60 statements, including all other existing subject officer  
61 statements, and all other existing evidence, including, but not  
62 limited to, incident reports, GPS locator information, and audio  
63 or video recordings relating to the incident under  
64 investigation, must ~~shall~~ be provided to each ~~the~~ officer who is  
65 the subject of the complaint before ~~prior to~~ the beginning of  
66 any investigative interview of that officer. An officer, after  
67 being informed of the right to review witness statements, may  
68 voluntarily waive the provisions of this paragraph and provide a  
69 voluntary statement at any time.

70 (e) Interrogating sessions shall be for reasonable periods  
71 and shall be timed to allow for such personal necessities and  
72 rest periods as are reasonably necessary.

73 (f) The law enforcement officer or correctional officer  
74 under interrogation may ~~shall~~ not be subjected to offensive  
75 language or be threatened with transfer, dismissal, or  
76 disciplinary action. A ~~No~~ promise or reward may not ~~shall~~ be  
77 made as an inducement to answer any questions.

78 (g) The formal interrogation of a law enforcement officer  
79 or correctional officer, including all recess periods, must  
80 ~~shall~~ be recorded on audio tape, or otherwise preserved in such  
81 a manner as to allow a transcript to be prepared, and there  
82 shall be no unrecorded questions or statements. Upon the request  
83 of the interrogated officer, a copy of any ~~such~~ recording of the  
84 interrogation session must be made available to the interrogated

85 officer no later than 72 hours, excluding holidays and weekends,  
 86 following said interrogation.

87 (h) If the law enforcement officer or correctional officer  
 88 under interrogation is under arrest, or is likely to be placed  
 89 under arrest as a result of the interrogation, he or she shall  
 90 be completely informed of all his or her rights before  
 91 commencing ~~prior to the commencement of~~ the interrogation.

92 (i) At the request of any law enforcement officer or  
 93 correctional officer under investigation, he or she has ~~shall~~  
 94 ~~have~~ the right to be represented by counsel or any other  
 95 representative of his or her choice, who shall be present at all  
 96 times during the ~~such~~ interrogation whenever the interrogation  
 97 relates to the officer's continued fitness for law enforcement  
 98 or correctional service.

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

102 (4) (a) NOTICE OF DISCIPLINARY ACTION.--A ~~No~~ dismissal,  
 103 demotion, transfer, reassignment, or other personnel action that  
 104 ~~which~~ might result in loss of pay or benefits or that ~~which~~  
 105 might otherwise be considered a punitive measure may not ~~shall~~  
 106 be taken against any law enforcement officer or correctional  
 107 officer unless the ~~such~~ law enforcement officer or correctional  
 108 officer is notified of the action and the reason or reasons for  
 109 the action before ~~therefor prior to~~ the effective date of the  
 110 ~~such~~ action.

111 (b) Notwithstanding ~~the provisions of~~ s. 112.533(2),  
 112 whenever a law enforcement officer or correctional officer is

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

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

131 (a) Except as provided in this subsection, ~~no~~ disciplinary  
 132 action, suspension, demotion, or dismissal may not ~~shall~~ be  
 133 undertaken by an agency against a law enforcement officer or  
 134 correctional officer for any act, omission, or other allegation  
 135 of misconduct if the investigation of the ~~such~~ allegation is not  
 136 completed within 180 days after the date the agency receives  
 137 notice of the allegation by a person authorized by the agency to  
 138 initiate an investigation of the misconduct. If ~~In the event~~  
 139 ~~that~~ the agency determines that disciplinary action is  
 140 appropriate, it shall complete its investigation and give notice

CS/HB 1107

2009

141 in writing to the law enforcement officer or correctional  
142 officer of its intent to proceed with disciplinary action, along  
143 with a proposal of the specific action sought, including length  
144 of suspension, if applicable. ~~Such~~ Notice to the officer must  
145 ~~shall~~ be provided within 180 days after the date the agency  
146 received notice of the alleged misconduct, except as follows:

147 1. The running of the limitations period may be tolled for  
148 a period specified in a written waiver of the limitation by the  
149 law enforcement officer or correctional officer.

150 2. The running of the limitations period is ~~shall be~~  
151 tolled during the time that any criminal investigation or  
152 prosecution is pending in connection with the act, omission, or  
153 other allegation of misconduct.

154 3. If the investigation involves an officer who is  
155 incapacitated or otherwise unavailable, the running of the  
156 limitations period is ~~shall be~~ tolled during the period of  
157 incapacitation or unavailability.

158 4. In a multijurisdictional investigation, the limitations  
159 period may be extended for a period of time reasonably necessary  
160 to facilitate the coordination of the agencies involved.

161 5. The running of the limitations period may be tolled for  
162 emergencies or natural disasters during the time period wherein  
163 the Governor has declared a state of emergency within the  
164 jurisdictional boundaries of the concerned agency.

165 (b) An investigation against a law enforcement officer or  
166 correctional officer may be reopened, notwithstanding the  
167 limitations period for commencing disciplinary action, demotion,  
168 or dismissal, if:

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

171 2. The evidence could not have reasonably been discovered  
 172 in the normal course of investigation or the evidence resulted  
 173 from the predisciplinary response of the officer.

174  
 175 Any disciplinary action resulting from an investigation that is  
 176 reopened pursuant to this paragraph must be completed within 90  
 177 days after the date the investigation is reopened.

178 Section 2. Paragraph (a) of subsection (2) of section  
 179 112.533, Florida Statutes, is amended to read:

180 112.533 Receipt and processing of complaints.--

181 (2) (a) A complaint filed against a law enforcement officer  
 182 or correctional officer with a law enforcement agency or  
 183 correctional agency and all information obtained pursuant to the  
 184 investigation by the agency of the ~~such~~ complaint is ~~shall be~~  
 185 confidential and exempt from the provisions of s. 119.07(1)  
 186 until the investigation ceases to be active, or until the agency  
 187 head or the agency head's designee provides written notice to  
 188 the officer who is the subject of the complaint, either  
 189 personally or by mail, that the agency has either:

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

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

194  
 195 Notwithstanding the foregoing provisions, the officer who is the  
 196 subject of the complaint, along with legal counsel or any other

CS/HB 1107

2009

197 representative of his or her choice, may review the complaint  
198 and all statements regardless of form made by the complainant  
199 and witnesses and all existing evidence, including, but not  
200 limited to, incident reports, analyses, GPS locator information,  
201 and audio or video recordings relating to the investigation,  
202 immediately before ~~prior to the~~ beginning of the investigative  
203 interview. All statements, regardless of form, provided by a law  
204 enforcement officer or correctional officer during the course of  
205 a complaint investigation of that officer shall be made under  
206 oath pursuant to s. 92.525. Knowingly false statements given by  
207 a law enforcement officer or correctional officer under  
208 investigation may subject the law enforcement officer or  
209 correctional officer to prosecution for perjury. If a witness to  
210 a complaint is incarcerated in a correctional facility and may  
211 be under the supervision of, or have contact with, the officer  
212 under investigation, only the names and written statements of  
213 the complainant and nonincarcerated witnesses may be reviewed by  
214 the officer under investigation immediately prior to the  
215 beginning of the investigative interview.

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

218 112.534 Failure to comply; official misconduct.--

219 (1) If any law enforcement agency or correctional agency  
220 fails to comply with the requirements of this part, a law  
221 enforcement officer or correctional officer employed by or  
222 appointed to such agency who is personally injured by such  
223 failure to comply may apply directly to the circuit court of the  
224 county wherein such agency is headquartered and permanently



CS/HB 1107

2009

225 | resides for an injunction to restrain and enjoin such violation  
226 | of the provisions of this part and to compel the performance of  
227 | the duties imposed by this part. Alternatively, an officer  
228 | entitled to the protections of this part may petition the  
229 | circuit court for a review of any alleged material violation of  
230 | this part. Upon a showing by a preponderance of the evidence  
231 | that an agency or personnel acting on behalf of the agency has  
232 | engaged in an intentional, material violation of this part, the  
233 | court may fashion a remedy, including, but not limited to, a  
234 | reversal of the disciplinary action.

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